

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF RESOURCE CONSERVATION AND RECOVERY
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

PUBLIC HEARING ON EPA'S PROPOSED RULE ON
Hazardous and Solid Waste Management System;
Identification and Listing of Special Wastes;
Disposal of Coal Combustion Residuals from
Electric Utilities

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2 EPA Hearing Panel:

3 Morning Session:

4 ROBERT DELLINGER, Chair
Director of Materials Recovery and Waste
5 Management
Office of Resource Conservation and Recovery

6 ROBERT STACHOWIAK

7 FRANK NEY

8 ALEXANDER LIVNAT

9 Afternoon Session:

10 FRANK BEHAN, Chair
Acting Chief of the Energy Recovery and Waste
11 Disposal Branch
Office of Resource Conservation and Recovery

12 SUZANNE RUDZINSKI

13 JEREY AMES

14 ELAINE EBY

15 Evening Session:

16 ROBERT DELLINGER, Chair
Director of Materials Recovery and Waste

17 Management
Office of Resource Conservation and Recovery

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19 FRANK NEY

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1 Night Session:

2 SUZANNE RUDZINSKI, Chair

3 JEREMY AIMES

4 ALEXANDER LIVNAT

5 COLLEEN KELTZ

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1 P R O C E E D I N G S

2 (10:00 a.m.)

3 MR. DELLINGER: Good morning, and thank
4 you for attending today's public hearing on the
5 Environmental Protection Agency's proposed rule
6 regarding the regulation of coal combustion
7 residuals that are disposed of in landfills and
8 surface impoundments.

9 Before we began I'd like to thank you
10 for taking your time out of your busy schedules to
11 address our proposed rule, and we look forward to
12 receiving your comments. This is the fourth of
13 eight public hearings that we'll be conducting.
14 We have had three very successful hearings in
15 Washington DC, Denver, and Dallas. Remaining
16 hearings are scheduled for Chicago later this
17 week, Pittsburgh next week, Louisville the week
18 after and then a final hearing in Tennessee.

19 My name is Bob Dellinger. I'm the
20 director of the Materials Recovery and Waste
21 Management Division in EPA's Office Of Resource
22 Conservation and Recovery. I'll be chairing this

1 session of today's public hearing. With me on the
2 panel are Rob Stachowiak of EPA's Office of
3 General Counsel, Frank Ney of EPA's Region Four
4 office, and Alexander Livnat, who works with me.

5 Before we begin the public hearing I
6 would like to provide you a brief description of
7 the proposed rule as well as the logistics on how
8 we plan to run today's hearing. Coal combustion
9 residuals, or CCRs, are residues from combustion
10 of coal and electric utilities and include fly
11 ash, bottom ash, boiler slag and flue gas
12 desulfurization materials. Coal combustion
13 residuals contain problematic contaminants such as
14 mercury, cadmium, selenium and arsenic.

15 In 2008, 136 million tons of coal
16 combustion residuals were generated by electric
17 utilities and independent power producers. Of
18 that total, approximately 46 million tons were
19 landfilled, 30 million tons were disposed in
20 surface impoundments, 50 million tons were
21 beneficially used, and 11 million tons were used
22 in mine fill operations.

1 EPA estimates that there are
2 approximately 300 landfills and more than 600
3 surface impoundments where coal combustion
4 residuals are disposed. We propose to regulate
5 the coal combustion residuals to ensure their safe
6 management when they are disposed in landfills and
7 service impoundments. Without proper protections
8 the contaminants in these residuals can leach into
9 groundwater and migrate into drinking water
10 sources, posing public health concerns.

11 In addition, the structural failure of
12 surface impoundment in the Tennessee Valley
13 Authority's plant in Kingston, Tennessee in
14 December of 2008 released more than 5 million
15 cubic yards of coal ash into approximately 300
16 acres of land and contaminated portions of the
17 Emory and Clinch rivers.

18 With this proposal the EPA has opened a
19 national dialogue by calling for public comment on
20 two different regulatory approaches that are
21 available under the Resource Conservation and
22 Recovery Act for addressing the risks from

1 disposal of coal combustion residuals. One option
2 presented in the proposed rule draws from the
3 authorities available under Subtitle C Of RCRA.
4 This would create a comprehensive program of
5 federally enforceable requirements for waste
6 management and disposal.

7 The other option is based on the
8 authorities of Subtitle D of RCRA, which gives EPA
9 the authority to set national minimum federal
10 criteria for waste management facilities that must
11 be met under a schedule established in the
12 regulation when it's finalized. The regulation
13 would be enforced for citizen suits. Under this
14 scenario, states qualify as citizens. EPA decided
15 to co-propose these two rule options to encourage
16 a robust dialogue on how to address the human
17 health concerns and structural integrity issues
18 associated with the disposal of coal combustion
19 residuals in landfills and surface impoundments.

20 EPA wants to ensure that our ultimate
21 decision is based on the best available data and
22 is made with a substantial input of all

1 stakeholders. Therefore we ask that you provide
2 us your comments not only in today's hearing but
3 any other comments and supporting information that
4 you want to provide in writing.

5 I'd also like to say a few words about
6 the beneficial use of coal combustion residuals.
7 The proposed rule maintains the Bevill exemption
8 for coal combustion residuals that are
9 beneficially used and therefore, would not alter
10 the regulatory status of these residuals when used
11 in this manner. EPA continues to strongly support
12 the safe and protected beneficial use of CCRs.
13 However, the proposal also indicates that concerns
14 have been raised with some uses of coal combustion
15 residuals, particularly when used in an
16 encapsulated form. Therefore, we request
17 comments, information and data on specific aspects
18 of beneficial use, particularly those activities
19 that deal with unencapsulated applications.

20 We also make it clear in the proposal
21 that coal combustion residuals that are placed in
22 sand or gravel pits, quarries and other

1 large-scale fill operations are not examples of
2 beneficial use. EPA views this placement as akin
3 to disposal and would regulate these sites as
4 disposal sites under either of these regulatory
5 options.

6 Now, I'm going to cover the logistics
7 for the comment portion of today's public hearing.
8 The way that this will work is speakers, if you
9 preregistered you've been given a 15 minute time
10 slot when you're scheduled to give you three
11 minutes of testimony. To guarantee that slot we'd
12 ask that you sign in 10 minutes before your
13 15-minute slot at the registration desk. All
14 speakers, those who have preregistered and
15 walk-ins, were given a number when you signed in
16 today and this is the order in which you will
17 speak, with some slight modifications to
18 accommodate some people's needs.

19 I will call speakers to the front of the
20 room by number four or five at a time. When your
21 number is called, please move to the microphone
22 and state your name and your affiliation. We may

1 ask you to spell your name for the court reporter,
2 who is transcribing your comments for the official
3 record.

4 Because there are many people signed up
5 to provide testimony today and to be fair to
6 everyone, testimony is limited to three minutes.

7 We will be using an electric timekeeping system
8 and will also hold up cards to let you know when
9 the time is getting low. When we hold up the
10 first card this means that you have two minutes
11 left. When we hold up the second card you have
12 one minute left. When the third card is held in
13 up, you have 30 seconds left and when the red card
14 is held up you are out of time and should not
15 continue with your remarks. Remember you can
16 provide written material to our court reporter and
17 the material will be entered into the rulemaking
18 record just as if the testimony was given today.

19 We will not be answering questions on
20 the proposal. However, from time to time any of
21 us on the panel may ask questions of you to
22 clarify your testimony.

1 As I just mentioned, if you've brought a
2 written copy of your testimony, please leave the
3 copy in the box by our court reporter. That's on
4 my left, your right. If you are only submitting
5 written comments today, please put those in the
6 box by the registration desk. If you have
7 additional comments after today please follow the
8 instructions in the yellow handout and submit
9 comments by November 19, 2010.

10 Our goal is to ensure that everyone who
11 has come today to present testimony is given the
12 opportunity to provide comment. To the extent
13 allowable provided by time constraints we will do
14 our best to accommodate speakers who had not
15 preregistered. Today's hearing is scheduled to
16 close at 9:00 p.m, and I think it's highly likely
17 that we're going to be here long after 9:00
18 o'clock. We've got an overflow crowd that we're
19 expecting to continue long into the evening.

20 If, however, time does not allow you to
21 present your comments orally, we have prepared a
22 table in the lobby where you can provide a written

1 statement in lieu of oral testimony. These
2 written statements will be collected and entered
3 into the docket for the proposed rule, and will be
4 considered the same as if you had presented them
5 orally.

6 If you would like to testify but had not
7 yet registered to do so, please sign up at the
8 registration table. We are likely to take
9 occasional breaks but we are prepared to eliminate
10 or shorten the breaks in order to allow as many
11 people as possible to provide their oral
12 testimony. Finally, if you have a cell phone we
13 would appreciate it if you would turn it off or
14 turn it to vibrate. If you need to use your phone
15 any time during the hearing, please move the
16 lobby.

17 We ask for your patience as we proceed.
18 We may need to make some minor adjustments as the
19 day progresses. Thanks again for participating
20 today and let's get started.

21 With that, would speakers number one,
22 two, three, and four move to the front? Number

1 one?

2 MR. SCARBOROUGH: I am Steve Scarborough
3 and my home is Roane County, Tennessee.

4 This committee will hear from an army of
5 hired corporate spokesmen who will all make
6 essentially the same argument. That argument is
7 that doing the right thing and adequately
8 protecting the people from coal ash will cost you
9 extra. They will argue against having Federal
10 oversight, saying that they can be trusted to do
11 the right thing without regulatory oversight, that
12 state agencies will make sure they handle their
13 coal ash just fine, that a system where citizens
14 having to sue them to make sure they handle their
15 coal ash is just fine, and that citizens have to
16 sit through a hodge-podge of state courts is
17 better than comprehensive and consistent federal
18 regulations in which the EPA has the power to
19 inspect and enforce.

20 And oh yes, doing the right thing will
21 cost too much.

22 I drove five hours today -- just got out

1 of the car -- to tell you that not doing the right
2 thing will cost far more. I come here to speak as
3 strongly as I can for Option C. When I read the
4 EPA cost- benefit analysis I thought, "Why is
5 anyone opposed to this?" The reason is that it
6 makes the people who make the money creating coal
7 ash waste pay the cost of adequately handling and
8 storing coal ash. That is also the reason they
9 oppose Option C. They will have to pay more of
10 the true cost of coal power instead of shifting it
11 to the American people.

12 Roane County, Tennessee is my home. It
13 is a beautiful part of America that I hope you all
14 get to visit. It is also the site of the Kingston
15 TVA coal ash disaster, the largest in American
16 history, where millions of cubic yards of
17 improperly handled and stored coal ash waste
18 destroyed a way of life during the night on
19 December 22, 2008. Had it not happened just after
20 midnight on the longest and coldest night of the
21 year, we would have had a body count to go with
22 this disaster of geological proportions.

1 I count myself lucky compared to those
2 whose homes were there. I have two lake lots on
3 the Emory River that were on the market then that
4 I now cannot sell except for pennies on the
5 dollar. Having real estate that you cannot sell
6 is far better than having a life that cannot be
7 made whole.

8 This disaster was caused by incompetency
9 and willful negligence at multiple levels but
10 mainly in the financial decisions of a corporate
11 bureaucracy focusing on shortsighted cost savings
12 and a complicit state agency that allowed it to
13 operate a massive coal storage facility without
14 adequate oversight. For a savings of less than 20
15 million dollars TVA now faces a billion dollar
16 bill for cleaning it up, and an additional burden
17 that can never be paid for and people who were
18 harmed and cannot be made whole.

19 There are no cost savings in
20 inadequately protecting innocent people's lives.
21 There is no justice in shifting the cost burdens
22 from businesses which profit from coal power to

1 innocent members of surrounding communities.
2 Option C is the only moral choice. It is also the
3 only financially sound choice. To do less would
4 simply cost too much.

5 MR. DELLINGER: Thank you. Number two?

6 MS. DIGGINS: Thank you. My name is
7 Molly Diggins and I'm the state director of the
8 North Carolina chapter of the Sierra Club, which
9 has about 15,000 members in North Carolina. On
10 behalf of the Sierra Club, I would like to express
11 our appreciation to EPA for holding this hearing
12 today in Charlotte.

13 Coal ash is of particular importance to
14 North Carolina, for we have the dubious
15 distinction of having been identified by the EPA
16 as having more high-hazard coal ash ponds than any
17 other state in the country. We know that we
18 generated last year nearly 4 million tons of dry
19 ash. We have no idea how much wet ash was
20 generated because it's not required to report that
21 information.

22 Following the catastrophic spill in

1 Tennessee, we looked around. We took a close look
2 at what's happening in North Carolina, plus
3 looking at other states to see what we needed to
4 do here. And we're frankly astonished to learn
5 that despite what is known about the health
6 impacts of coal ash and the toxins, that there's
7 no agency, no individual, no institution in North
8 Carolina that can answer the question: how much
9 coal ash are we generating, where is it going, and
10 is it safe?

11 There is a hodgepodge of programs and
12 regulation but ultimately, North Carolina is awash
13 in coal ash, and there is no cop on the beat.
14 Here is what we do know: investigations, when they
15 have taken place, have shown that we are having
16 problems with groundwater and surface water
17 contamination in North Carolina. And the list of
18 damage reports is continuing to grow here in this
19 state, and nationally.

20 We believe this is only the tip of the
21 iceberg. The public is just now really becoming
22 engaged in understanding what may be in their

1 backyard, what may be in the lot next door; in
2 fact, what might be under their own property.

3 I know that this rule as proposed does
4 not address beneficial fill, but I do want to
5 point out in North Carolina we have a loophole.
6 Maybe they don't in other states, but we have a
7 loophole here that allows largely unregulated
8 dumping of coal ash in unlined landfills. That is
9 a serious problem.

10 Subtitle D might have been worth a try a
11 decade ago when EPA first started giving serious
12 consideration to addressing the health impacts.
13 That time is long past. The magnitude of the
14 problem is such that Option C is the only viable
15 option. Citizens and states need consistent,
16 federally-enforceable requirements if we are going
17 to succeed in managing this threat to public
18 health.

19 Finally, let me conclude by saying that
20 this is a moment of leadership. We appreciate
21 that the EPA inherited this problem from a
22 previous administration, but the public is really

1 looking to you to act. There are many here today
2 who are going to talk to you about beneficial
3 fill. I would just state that a failure to act to
4 protect public health to avoid a hypothetical
5 public relations problem for certain uses of coal
6 not regulated by this rule, would be a complete
7 abdication of the public trust. We urge you to
8 adopt Option C.

9 Thank you.

10 MR. DELLINGER: Thank you.

11 MS. DIGGINS: And we would like to
12 submit for the record this map, which shows the
13 location of sites here in this region. Thank you.

14 MR. DELLINGER: Thank you. Number
15 three?

16 MR. LEMLEY: Hello. I'm Dr. Dennis
17 Lemley. I am a research fish biologist and I am
18 attending this public hearing as a private citizen
19 expressing personal views. My comments pertain to
20 the aquatic hazard of selenium, which is a trace
21 element that leaches out from coal combustion
22 residues, or CCR, bioaccumulates in the aquatic

1 food chains and causes deformed young,
2 reproductive failure, and other toxic effects.

3 I have studied the environmental
4 toxicology of selenium pollutant from CCR for over
5 30 years, beginning with Belews Lake, North
6 Carolina and continuing today with the TVA ash
7 spill in Tennessee, which has polluted an entire
8 river ecosystem. Only 159 of the 2000-plus CCR
9 disposal sites across the country have undergone
10 technical evaluation to determine risks and
11 impacts. Yet 137 of these, or 86 percent, are
12 proven or suspected environmental damage cases, as
13 determined by EPA and other investigators. What
14 the damage cases show is that currently-used
15 disposal techniques pose a substantial ecological
16 hazard. From surface wet basins to quote, "dry
17 landfills," unquote, all can produce
18 selenium-laden leachate that can poison fish and
19 wildlife.

20 Little progress has been made in
21 updating disposal practices to better protect fish
22 and wildlife from toxins in CCR. For example, the

1 1970's Belews Lake case resulted from open surface
2 disposal of coal ash. So did the TVA catastrophe
3 in 2008, more than 30 years later. Lessons about
4 CCR disposal from Belews lake were not heeded and
5 the issue has expanded from a regional problem
6 into a national one. In addition, we have learned
7 that landfills and other so-called dry disposal
8 methods offer little more protection for aquatic
9 life than open surface storage. Even disposal
10 sites with composite liners produce leachate that
11 must be treated.

12 There is no disposal method for CCR that
13 is selenium-free. The two regulatory options
14 under consideration by EPA are very different with
15 respect to selenium hazards. Subtitle D would
16 essentially be business as usual since it does not
17 eliminate surface impoundment disposal practices
18 like those which led to the disasters at Belews
19 lake and TVA-Kingston, and the D Prime alternative
20 does not require liners, leachate collection and
21 treatment. Option D is clearly not protective of
22 fish and wildlife health.

1 Subtitle C, or a special waste
2 designation, will afford a much greater level of
3 protection as a consequence of better and
4 federally enforceable, nationally consistent
5 controls on selenium-laden leachate. One argument
6 against a C designation is the cost associated
7 with the extra pollution control measures it
8 requires. However, the cost of anything less than
9 a C designation can be even more expensive. For
10 example, the cleanup cost at just one polluted
11 site can be over a billion dollars, and the
12 ongoing environmental cost of poisoned fish and
13 wildlife at one site can easily be in the millions
14 per year.

15 Thank you for the opportunity to
16 testify.

17 MR. DELLINGER: Thank you. While number
18 four is coming up to speak, could numbers five,
19 six, seven, and eight move to the front chairs?

20 MS. HITT: My name is Marianne Hitt. I
21 am here today both as the national director of the
22 Sierra Club's "Beyond Coal" campaign, and as a new

1 mom.

2 I have two quick points I want to make
3 today, and a brief story about my own personal
4 close encounter with coal ash. The first point:
5 coal ash should be classified under Subtitle C of
6 RCRA, not D, because one, it is indeed toxic. Why
7 else would TVA be spending \$1 billion in buying up
8 all the land around the Kingston spill if it was
9 not? We know it causes developmental problems in
10 children, and cancer and other ailments caused by
11 all those heavy metals.

12 And secondly, the key here is that
13 Subtitle C is federally enforceable and Subtitle D
14 is not. Subtitle D is only enforceable by states
15 and citizen suits. And we know that state
16 enforcement has been spotty at best. That's what
17 got us into this situation in the first place.
18 And I think we can all agree that it's unfair and
19 I would say unreasonable to expect citizens to
20 bear the burden of enforcing rules when the
21 polluters they are encountering are
22 well-resourced, well-financed, and these are

1 complex, lengthy, technical, legal proceedings.

2 So putting the burden of enforcement on
3 states and on citizens is not getting the job done
4 when you've got hundreds of these sites all across
5 the country.

6 And briefly, on the industry stigma
7 argument, which I know you'll be hearing a lot
8 about; it's a convenient argument for continuing
9 business as usual, but the fact is that many other
10 industries have actually seen recycling increase
11 and become more economically profitable once it
12 was clear that hazardous waste would go in one
13 direction and beneficial use would be not
14 classified and kept out of the hazardous waste
15 stream, and we've got lots of examples that the
16 Sierra Club will be submitting as part of our
17 testimony.

18 But to close, I think a lot of us are
19 here because of our personal experience with coal
20 ash and I think mine illustrates the harm in not
21 making it clear that coal ash needs to be
22 regulated by the EPA. I used to spend a lot of

1 time canoeing on the New River, and the Glenn Lynn
2 power plant, they proposed a coal ash dump that
3 was eventually built right on the banks of the New
4 River, 100 yards of flood plain full of coal ash
5 with no lining, no cap, and that was built in part
6 with local citizen approval because local citizens
7 were told, "Look, if this was harmful, EPA would
8 be doing something about it. If this was
9 dangerous, EPA would regulate it. It's not.
10 Therefore, this is just as benign as dirt and
11 we're just putting it in the flood plain. It
12 won't cause a problem."

13 And so that flood plain is now filled
14 with many tons of coal ash. I would be personally
15 hesitant to once again go back to that section of
16 the river and float downstream from that site,
17 knowing that there is unprotected coal ash pit
18 right there on the river bank. I can only imagine
19 what it's like for the parents of the 1.5 million
20 children who live near these sites and depend on
21 drinking water and bathing water for their
22 children, not knowing if it's safe or not.

1 So on behalf of those families and on
2 behalf of the Sierra Club, I would encourage you
3 to choose Subtitle C. Thanks.

4 MR. DELLINGER: Thank you. Number five.

5 MR. GUPTON: Good morning. My name is
6 Bill Gupton. I'm the chair of the Central
7 Piedmont Sierra Club, representing over 2300
8 members in a 10-county area around the
9 Charlotte-Mecklenburg region, and we urge you to
10 adopt Subtitle C.

11 I grew up here in Mecklenburg County
12 only a few miles from the Riverbend Steam Station,
13 and very little has changed in terms of
14 regulation, monitoring, or containment of coal ash
15 in the two high-hazard coal ash ponds on Mountain
16 Island Lake. These aging coal ash ponds, one
17 built in 1957, are both still unlined. Both are
18 still leaching hazardous substances into the
19 ground and contaminating our groundwater, a fact
20 documented by Duke Energy's own data.

21 As is seen in this photograph, every day
22 millions of gallons of water, along with a toxic

1 soup of arsenic, mercury, lead, chromium, barium,
2 selenium, cadmium, and more are still being
3 discharged into our drinking source and this
4 valuable recreational resource.

5 The two coal ash ponds at Riverbend
6 cover a 69-acre area and are 80 feet and 70 feet
7 deep; the equivalent of a 15-story skyscraper of
8 toxic, poorly- regulated, hazardous and
9 life-threatening coal ash sitting on the banks of
10 Mountain Island Lake where I swam and played in my
11 youth. I don't want my children's children to be
12 exposed to this. This is why we strongly urge you
13 to adopt Subtitle C.

14 As this illustration shows, what has
15 changed over the years is that this portion of the
16 Catawba River is the primary source of drinking
17 water for over eight cities and three quarters of
18 a million people. Mountain Island Lake supplies
19 80 percent of the Charlotte drinking water, and
20 our intake source is just downstream from the coal
21 ash pond and the discharge.

22 What has also changed is industry

1 reports that now show about two thirds of coal ash
2 is used for structural fill, the melting of snow
3 and ice on the roads, and other uses that allow
4 these toxins to seep into our groundwater and run
5 off into our streams and lakes. And because our
6 current regulation, no one is required to disclose
7 this, and it's all perfectly legal.

8 Obviously, our current requirements and
9 traditions are not adequate. A decade ago, coal
10 industry promised the EPA it would self-monitor
11 groundwater, your coal ash ponds. It took Duke
12 Energy over eight years to take the first sample
13 last year. Obviously, current requirements and
14 regulations are not working.

15 The state of North Carolina, the North
16 Carolina Utility Commission have shown that they
17 do not have the ability or the desire to enact or
18 adequately enforce regulations on coal ash and
19 coal ash pond. This is why we urge you to adopt
20 Subtitle C.

21 Thank you.

22 MR. DELLINGER: Thank you. And number

1 six.

2 MR. WARD: My name is John Ward and I am
3 Chairman of Citizens for Recycling First, an
4 organization of over 1,500 individuals who believe
5 that the best solution for solving coal ash
6 disposal problems is to quit throwing coal ash
7 away.

8 At its first three public hearings, the
9 EPA has heard from dozens of people who are
10 actively involved in the recycling of coal ash to
11 produce significant environmental benefits,
12 including millions of tons in annual reductions of
13 greenhouse gas emissions. These people include
14 producers, marketers and users of coal ash and
15 they have unanimously testified that designating
16 coal ash as hazardous waste when destined for
17 disposal will create a stigma that will ruin the
18 recycling industry.

19 A handful of witnesses, none of them
20 actually involved in recycling coal ash, have
21 stated that stigma is not real. They have said
22 that other hazardous materials get recycled and

1 that the higher costs of disposal that come with a
2 hazardous designation will incentivize people to
3 recycle more. Today I would like to point out why
4 those positions are just plain wrong.

5 First of all, examples of other
6 hazardous materials that get recycled are not
7 comparable to coal ash. Most examples cited by
8 stigma deniers are of materials that get
9 reprocessed before they are reused. Coal ash is
10 not reprocessed before it is recycled and is
11 mechanically and chemically identical to coal ash
12 that is disposed. This opens the door to
13 litigation that will ask, if it's hazardous over
14 there, why is it not hazardous over here?

15 Furthermore, most examples cited by
16 stigma deniers are of materials that are reused by
17 the very industries that produced them. Coal ash
18 is widely dispersed to literally thousands of
19 locations in every community and is placed in
20 products that come in direct contact with everyday
21 users.

22 Finally, many examples cited by stigma

1 deniers are materials that do not compete with
2 alternative products. Your gasoline-fueled car
3 cannot operate without gasoline. Concrete and
4 other products can be made without coal ash. EPA
5 has already heard testimony that some
6 manufacturers of competitive products are already
7 using the prospect of a hazardous waste
8 designation to sow fear among coal ash users.

9 As for the position that higher disposal
10 costs will automatically lead to greater recycling
11 rates, please consider history. In 2000, the
12 recycling rate for coal ash was 30 percent. In
13 2008, it had increased to 44 percent; a 50 percent
14 increase in less than a decade. Did the cost of
15 disposal increase during that time? No. So what
16 was responsible for the dramatic increase in
17 recycling rates?

18 The answer is, in 2000 the Environmental
19 Protection Agency issued its final regulatory
20 determination that concluded coal ash does not
21 warrant regulation as a hazardous waste. That
22 sent a clear signal to producers, marketers and

1 users of ash who began to invest more in the
2 infrastructure necessary to support recycling. In
3 2002, the Environmental Protection Agency
4 accelerated this effort by creating the Coal
5 Combustion Products Partnership, or C2P2 program,
6 to actively promote recycling as a preferred
7 alternative to disposal.

8 Sadly, EPA has now reversed this trend
9 by creating a new era of regulatory uncertainty
10 and by stepping back from its visible support for
11 recycling.

12 The EPA should enact tougher coal ash
13 disposal regulations. But it should do so without
14 unnecessarily stigmatizing coal ash as a hazardous
15 waste.

16 MR. DELLINGER: Thank you. Number
17 seven.

18 MR. LINER: Good morning. My name is
19 Jerry Liner, speaking on behalf of concerned
20 businesses and manufacturers, concrete block
21 producers, aggregate suppliers, architects, and
22 engineers in the region regarding the byproduct

1 coal ash materials.

2 We all realize that the United States
3 Environmental Protection Agency has a national
4 challenge to write new regulations on a waste
5 material that could and will benefit the health
6 and safety of the public for many years. We all
7 realize the major concerns, but there is also more
8 than just containment and fly ash. As this
9 country moves more and more toward recycling, or
10 the green movement, we all must look very closely
11 at the materials being recycled and the types of
12 products being used for health and safety
13 concerns.

14 The coal ash different byproducts must
15 call for different regulations based on the
16 material itself and the end use. The real issue
17 at hand for this group of professionals and
18 manufacturers is the bottom ash material, having
19 the potential of being a health and safety concern
20 when used in the manufactured cement- type
21 products.

22 The bottom ash material does not have

1 construction standards such as ASTM like fly ash.
2 While fly ash is contained in the cement paste
3 when used, bottom ash is not contained when used
4 as an aggregate to manufacture concrete block and
5 other manufactured cement products, leaving the
6 waste material exposed on the surface for
7 leaching. Please review the pictures submitted.

8 Unlike fly ash that is used at a very
9 small amount by percentage of the cement weight,
10 the bottom ash is used at 65 percent-plus of total
11 weight of mix of manufacturing concrete block,
12 making a product that we believe will release the
13 hazardous materials.

14 As EPA reviews all of the collected
15 information, we would like to encourage the
16 additional regulations that sets controlled
17 standards on the reuse and non-use of the reused
18 materials based on the type of waste material and
19 how it may be used. We all remember the Asbestos
20 issues and how long it took to show its ugly head.
21 Let's not allow the bottom ash waste material to
22 gain ground in construction products and spread

1 and repeat this type of history.

2 A commonsense approach to the big
3 picture of the coal ash byproducts regulations
4 could be considered as submitted with this
5 statement: One, regulate the pits. Regulate the
6 use of fly ash. Regulate bottom ash as a
7 hazardous material that cannot be used in concrete
8 block, and regulate the transportation of all the
9 materials.

10 Thank you.

11 MR. DELLINGER: Thank you. While number
12 eight is moving forward, can numbers nine, 10, 11,
13 and 12 move to the front.

14 MR. STEVENS: Good morning. My name is
15 Byard Stevens. I'm currently unemployed from
16 construction and concrete industry, and a
17 concerned citizen.

18 Many comments to date have been directed
19 on the controls and regulation of coal ash waste
20 material, pits, containment ponds, contaminated
21 ground water and the concerns of suitable re-use
22 of fly ash materials. Our Country is moving

1 forward with a new initiative of recycling in the
2 name of green, re-use, or other green-washing
3 terms that seem to be the buzz of the marketing
4 world.

5 A closer look need be taken in what
6 exactly is being re-used or recycled in the
7 concrete and concrete products industry. A good,
8 hard look need be taken on what materials are
9 being recycled or reused in the name of greening
10 that product. With that stated, we need to
11 emphasize that the coal ash byproducts need
12 different rules and regulations for the material
13 itself and the end product the material is
14 directed to. And realize that all of these areas
15 have long-term affects and are far more reaching
16 than containment and product re-use.

17 The real issues for manufacturers and
18 the end-users in the public is the heavier bottom
19 ash material having the potential of being a
20 health and safety concern when reused in the
21 manufactured cement type products as a lightweight
22 aggregate in concrete block. As stated before,

1 unlike fly ash, bottom ash does not have the same
2 rigid American Society for Testing and Materials
3 Construction Material standards. Bottom ash is
4 not contained in mix designs for concrete
5 materials in the same way as fly ash. While fly
6 ash is committed to the paste of the cement
7 mixture at a rate of five to seven percent
8 typically, bottom ash as a lightweight aggregate,
9 and can be up to 65 percent of the total mix
10 design in concrete block.

11 As EPA reviews all of the collected
12 information, we would like to encourage regulation
13 that sets controlled standards not only on the
14 storage pits but the reuse and non-reuse of the
15 waste materials based on the type of material used
16 and how and what products it may be used in.

17 Thank you very much.

18 MR. DELLINGER: Thank you. Number nine.

19 MS. HOFFNER: Good morning. My name is
20 Diane Hoffner, of CROP PLUS of New York State, and
21 my son Kevin is here with me. This morning we had
22 set up a projector. We could not have it

1 provided, but we felt we could present a
2 PowerPoint to you, but that right was declined to
3 us this morning. Therefore I ask you to time up
4 the two of us as an accommodation to not being
5 able to show the PowerPoint, and my son will help
6 me go forward.

7 What we have -- or did have, excuse me,
8 was a presentation that would have lasted six
9 minutes. I'm playing it for myself. There's
10 several people we wanted to recognize for that --
11 but this will time me to end my presentation.

12 Concerned Residents of Portland, New
13 York, and People like us, or CROP PLUS, is a
14 volunteer grassroots group established to protect
15 our environment and waterways. We're working to
16 end the use of coal combustion bottom ash as a
17 deicer and traction agent on our roads. This ash
18 is not encapsulated, sir, and it is a very serious
19 concern.

20 Our ditches are not lined. We believe
21 this use is merely unmonitored dumping rather than
22 reuse. What we have are a series of roads,

1 pictures, during the winter months. The snow is
2 pure white in these pictures, but the road is
3 black. And then when the plows come back and push
4 it to the side, it's a very slushy, black, soot-y
5 type mess. It is bottom ash.

6 My town mixes 10 part of bottom ash to
7 three parts of sand, to one part of salt. And
8 massive amounts can build up in the ditches. Our
9 ditches, again, are not lined.

10 New York State allowed this with a BUD
11 of beneficial use, but that BUD issued in 1992
12 said it required that it be tested twice a year to
13 guarantee the safety to our waterways and
14 environment. However, in 1993 New York introduced
15 a new regulation which, again, is part of our
16 problem. In this regulation, 360-1.15 has four
17 parts. Part A said any BUDs issued before should
18 stay in effect with all of their conditions if
19 they were issued previous to this. Part B lists
20 16 predetermined BUDs, where people don't even
21 have to apply to use it. If you agree to use it
22 this way, just go ahead and use it and you don't

1 even have to apply. Absolutely no testing.

2 Part D, though, again where we were told
3 that our BUD 122 was incorporated into this, I
4 felt, well, if they ignored it in part A and that
5 said we should keep the rules under the BUD, it
6 must have gone into part D. Part D has several
7 regulations, on paper only, that call for testing
8 and a plan, that the user and the producers
9 provide a plan. None of these plans exist. It
10 suggested that the ash not be stockpiled for more
11 than 90 days before use. I have pictures here of
12 huge piles from two towns: Portland and Pomfret.
13 And what it shows is that these piles are right
14 next to a creek.

15 When I sent for FOIA information,
16 absolutely no tests were available. I was granted
17 a grant by Freshwater Future out of Michigan, and
18 we tested two samples of coal ash, five streams
19 and surface waters, and three domestic wells. We
20 have those test results. And again, we repeatedly
21 ask that this come up. At Correll Creek, which is
22 behind my stockpile, when we were upstream,

1 aluminum, arsenic, barium, chromium, iron,
2 manganese, lead, and selenium were all very close
3 to zero. However, slightly downstream, these
4 numbers raised. And again, if anybody is
5 interested in seeing this we will show the slide
6 today in room 141 at noon, two, and 6:00 p.m.

7 After we had tested the ash and the five
8 waters -- my son will again show you some graphs.
9 One of the streams goes right through two
10 landfills. One of the landfills is designated
11 (inaudible) case damage case. Don Cramer
12 trucking, it is in the 2007 records, and that
13 second one is presently being used.

14 One of the streams that, with the ash
15 sludge that we got from the ditch, came from the
16 entrance to this landfill. It is unmarked. There
17 is absolutely nobody around the area who knows
18 exactly that this is a landfill. The closed one
19 has 700,000 cubic yards of ash. It was closed by
20 court order in 1988. It is still under 30 years
21 of supposed testing and the records, in checking,
22 is very poor. Absolutely no one is notified.

1 The ditch sludge, the aluminum was over
2 16,000, arsenic at 11.8, barium at 846, chromium
3 at 17, iron that 20,100 parts per million.
4 Manganese, 464. Lead, 14.5, and selenium did not
5 show.

6 But what we have to do is guarantee.
7 This ditch goes through two residential areas on
8 the bay of Lake Erie, and then directly into Lake
9 Erie. The three wells that were tested had quite
10 a bit of waste on them, and one well has been in
11 the DEC records since 1984 but that homeowner has
12 not had any satisfaction from sludge at the bottom
13 of the well.

14 A second one was also very high, with
15 the -- this particular thing shows all of our
16 tests. And what we're asking is that the EPA
17 grant us a meeting to review these three domestic
18 wells, the five surface waters, and the sludge in
19 the ash. Because this is proven to be very
20 dangerous.

21 Mr. Chuck Norse from Colorado reviewed
22 our data and said that Correll Creek was a sure

1 sign of contamination from water that is safe to
2 drink to one that is beyond.

3 I thank you and again, room 141. 12:00,
4 2:00 or 6:00. Thank you.

5 MR. DELLINGER: Thank you. One thing,
6 there is an overflow room that is equipped with
7 audio if people want to sit down, if you get tired
8 of standing.

9 Number 11?

10 MS. WASHINGTON: Good morning. We are
11 representing lower Richland, South Carolina, which
12 consists of Eastover, Gaskin, and Hodkins. The
13 group --

14 MR. DELLINGER: Can you please state
15 your name?

16 MS. WASHINGTON: My name is Anne Pringle
17 Washington of 3513 Old Eastover Road, Eastover,
18 South Carolina.

19 Several people have joined me here this
20 morning, taking time off from their work schedule
21 -- those people who are fortunate enough to have
22 jobs have continued to go there. I'd like to

1 recognize ones that are here. I've been asked to
2 serve as the spokesperson.

3 In this hand, I have some water. And I
4 wonder what you would say if I put just a little
5 bit in that pitcher down there and you drank it
6 during the course of the day. Now, that's a
7 rhetorical question and you need not answer
8 because the bottle is filled with water. It's
9 nothing that most people would call harmful. But
10 your skepticism would be correct. Because the
11 water is from Lower Richland, South Carolina. Yet
12 it is the water we drink. It is water we mix our
13 infant formula. It is the water we spray on our
14 gardens, water our plants, and our children and
15 grandchildren play in these substances.

16 On June 10, the Boston Globe published
17 an article by Robert Kupner. I may have
18 mispronounced his name, but he stated that oil
19 companies -- and here, he was speaking of oil
20 companies, but he was talking in terms of
21 companies in general, pursuing short-term gain do
22 not invest enough in safety precautions, and their

1 shareholders didn't care. Only government could
2 compel action, but failed to act.

3 More than a half-century ago, the late
4 economist John Kenneth Galbraith coined an
5 important concept. It's called countervailing
6 powers. This is what is happening here today.
7 Galbraith observed that businesses have immense
8 economic influence, but countervailing forces such
9 as the trade union movement or activist citizen
10 groups could neutralize that economic power by
11 harnessing government to keep businesses' less
12 savory tendencies from overpowering its benign
13 ones.

14 The U.S. Environmental Protection Agency
15 estimates that residents who live near unlined
16 coal ash plants and rely on well water have as
17 much as one in 50 chances of getting cancer from
18 arsenic exposure.

19 I'm going to skip, because my time is
20 running short, but the point that I want to make
21 is that we want to encourage you to please rule
22 coal ash byproducts as hazardous waste. The

1 bottle remains here. You needn't worry; I'm not
2 going to put any in your glasses. But do take
3 into consideration that we are drinking this water
4 on a daily basis and arsenic is constantly being
5 seeped into our well water. Thank you.

6 MR. DELLINGER: Thank you. Number 12?
7 And while number 12 is moving forward, can 13, 14,
8 15 and 16 move to the front?

9 MR. MELTON: Good Morning. My name is
10 Randy Melton, Environmental Administrator for
11 Tampa Electric Company. Thank you for this
12 opportunity to comment.

13 Tampa Electric serves over 700,000
14 customers throughout the Tampa Bay region of
15 central Florida. TECO operates two coal-fired
16 power plants that generate approximately one
17 million tons of CCRs annually, of which over 97
18 percent is beneficially reused in a variety of
19 environmentally-sustainable applications.

20 At both coal plants, we have worked with
21 the Florida Department of Environmental Protection
22 to modernize the facility's existing CCR

1 management units. These improvements have been
2 required by the FDEP to ensure the protection of
3 groundwater and surface water resources in the
4 vicinity of these plants. Projects have included
5 the capping and closure of inactive former
6 disposal units, the lining of CCR impoundments and
7 the redesign of handling systems to eliminate
8 onsite storage of CCR products prior to beneficial
9 reuse.

10 The impoundments and landfills at our
11 plants have been retrofitted with liner systems
12 that meet the permeability and leachate control
13 standards required by the federal Subtitle D
14 regulations. Any future facilities will also be
15 required to meet these standards. Our experience
16 is provided as an example to illustrate the
17 effectiveness of Florida's solid waste regulatory
18 program in addressing the safety of CCR management
19 units that are constructed within our state.
20 Other Florida utilities have similar experience
21 with this program, which is already authorized
22 under federal Subtitle D.

1 Therefore, we believe that the
2 imposition of Subtitle C standards on CCRs
3 produced in our state would serve no useful
4 purpose. Subtitle C is not needed and would only
5 serve to create confusion and derail the
6 successful regulatory program that is already in
7 place in Florida.

8 Tampa Electric is convinced that the
9 negative impacts of Subtitle C regulation will be
10 bad for the economy and for the environment.
11 Listing CCRs as a special class of hazardous waste
12 will create an immediate stigma on these valuable
13 products, resulting in drastic declines in sales.

14 Onsite stockpiles of CCRs will grow at
15 an alarming rate. Offsite disposal will skyrocket
16 and landfills nationwide will be stressed beyond
17 their capacities. Shipping of CCRs for disposal
18 will result in increases in fuel usage and
19 tailpipe emissions. Power generation costs will
20 increase in response to burdensome equipment
21 retrofits and operating requirements. Utility
22 customers throughout the country will suffer

1 significant rate increases. Many environmental
2 benefits from the beneficial reuse of CCRs,
3 including reduced demand for mined minerals,
4 reduced consumption of valuable landfill space,
5 and reduced greenhouse gas emissions, will
6 diminish.

7 On the other hand, Subtitle D, or
8 equivalent regulations administered by the states,
9 will adequately protect human health and the
10 environment without causing these adverse
11 consequences, as has been demonstrated by the
12 program already in place in the state of Florida.

13 We appreciate this opportunity to
14 comment on this important rulemaking and will be
15 providing EPA with more detailed comments. Thank
16 you for your consideration.

17 MR. DELLINGER: Thank you. Number 13?

18 MR. BRAY: Good morning. My name is
19 Stephan Bray and I am a solid waste engineer in
20 private practice with the firm Garret and Moore in
21 Raleigh, North Carolina. My background includes
22 providing engineering services for the power and

1 waste industries, to include county and local
2 governments and private industry. My experience
3 includes designing, permitting, constructing, and
4 monitoring Subtitle D and industrial waste
5 landfills.

6 Given the proposed options, it is my
7 opinion that the nonhazardous Subtitle D option is
8 most appropriate. Based on my experience, I offer
9 the following comments regarding select
10 engineering components of the proposed rules:

11 First, hazardous waste is defined as
12 waste that exceeds EPA-established toxicity
13 contaminant concentrations. The contaminants
14 typically of concern in CCRs include metals such
15 as arsenic, mercury, barium, cadmium, selenium,
16 chromium, lead, and others. While the
17 contaminants present in CCRs are certainly a
18 health concern, the data suggests that the
19 contaminant concentrations found in CCRs are
20 typically well under EPA's hazardous thresholds.

21 Second, the hazardous Subtitle C option
22 is not practicable, as it will result in a

1 shortfall of landfill disposal capacity. And
2 currently, there is very limited regional and
3 national commercial hazardous waste landfill
4 disposal capacity. Permitting a nonhazardous
5 landfill can take upwards of 5 to 10 years to
6 complete, while permitting a hazardous waste
7 landfill can nearly be an impossible task due to
8 opposition and legal challenges, as witnessed by
9 the fact that there are only 18 commercial
10 hazardous waste landfills nationwide, and none in
11 North and South Carolina.

12 Given the proposed timeline and my
13 experience permitting landfills, it is foreseeable
14 in the near future that there will be a period
15 where there simply isn't any available hazardous
16 waste disposal capacity under the Subtitle C
17 option. This situation will limit new electricity
18 production, as well as limit the option for
19 landfilling legacy waste currently stored in
20 existing ash impoundments.

21 And in comparison, while Subtitle D
22 landfill capacity is not infinite, it's much more

1 readily available and could likely be used as a
2 contingency to ensure uninterrupted power
3 generation and waste disposal capacity while
4 utilities permit the additional Subtitle D
5 landfill capacity.

6 Thirdly, the proposed timeline for
7 closure of existing ash impoundments under both
8 options is too short. Both the hazardous and
9 nonhazardous proposal generally require
10 impoundments to be closed within 5 to 7 years.
11 Some sites may choose to close the impoundments by
12 de-watering and capping over the in- placed waste.
13 Whereas, other sites may find it more appropriate
14 to remove the waste and place it in lined
15 landfills.

16 Based on my experience, the proposed
17 allowable time may not be long enough to
18 adequately investigate, plan, permit and execute
19 closure. These concerns are primarily warranted
20 for those impoundments for which appropriate
21 closure includes removal and landfilling of
22 millions of cubic yards of waste.

1 Given that both options include the same
2 landfill liner and groundwater requirements, as
3 well as the current landfill permitting
4 environment, it is my opinion that the
5 nonhazardous option is the most appropriate and
6 the only practicable option.

7 Thank you.

8 MR. DELLINGER: Thank you. Number 14?

9 MS. TAYLOR: Good morning. My name is

10 Chandra Taylor. I am senior attorney at Southern
11 Environmental Law Center in Chapel Hill, North
12 Carolina. Thank you for scheduling a hearing in
13 North Carolina for public comment on the proposed
14 CCR rule.

15 For the past 20 years, SELC is using the
16 full power of the law to conserve clean water,
17 healthy air, wildlands and livable communities
18 throughout the Southeast. My comments today are
19 directed at the need to reduce CCRs under Subtitle
20 C to ensure federally- enforceable regulations
21 which establish national safeguards to protect
22 public health and the environment.

1 Southern Environmental Law Center's
2 support for the Subtitle C option is based on my
3 review of state statutes and regulations across
4 the Southeast, which reveal significant statutory
5 and regulatory gaps in CCR regulation that result
6 in inadequate protection of the environment and
7 public health from the dangers proposed by CCRs.

8 Gaps in regulation previously identified
9 by the EPA have not been substantially addressed
10 by the states in the intervening period and
11 therefore only federal oversight under Subtitle C
12 will result in protective regulation.

13 In particular, as to inadequate state
14 regulation, in North Carolina in 2007 a
15 comprehensive solid waste management act was
16 passed. Most facilities became subject to
17 significantly stronger requirements for where
18 solid waste facilities could be placed. CCR
19 landfills were specifically exempted from those
20 provisions. In fact, in addition to the
21 particular exemption for new CCR landfills,
22 groundwater monitoring at CCR landfills is

1 voluntary rather than mandatory. In particular,
2 in the new law the statute specifically states
3 that compliance with performance of the landfill
4 to prevent releases of waste to the environment
5 may be determined based on the leakage rate rather
6 than monitoring well data. Adequate oversight to
7 determine if CCR constituents have migrated
8 off-site require the use of monitoring wells.
9 Thus, this statute is not sufficiently protective.

10 Further, when a leak is detected, there
11 is no set time period within which corrective
12 action must be taken.

13 In South Carolina, the stringency of
14 regulation of CCR landfills depends on the result
15 of a short-term leach test, the toxicity
16 characteristic leaching procedure. This test has
17 been soundly discredited for its failure to
18 accurately predict the migration of contaminants
19 from coal ash.

20 In Alabama, despite being a very large
21 CCR producing state, CCR landfills and surface
22 impoundments are not specifically regulated.

1 Overall, in the states of Alabama, North
2 Carolina, South Carolina, Virginia, Tennessee, and
3 Georgia, all six states fail to require liners for
4 all CCR surface impoundments and landfills. And
5 Georgia, Alabama, and South Carolina, they all
6 fail to require that CCR disposal units be
7 separated from groundwater. In Alabama, Georgia,
8 North Carolina and Tennessee, they all fail to
9 require that all CCR disposal units obtain solid
10 waste permits. And all six states failed to
11 require all waste unit to have groundwater
12 monitoring systems during active life and
13 post-closure.

14 We support the Subtitle C option. Thank
15 you.

16 MR. DELLINGER: Thank you. Number 15.
17 Is number 15 here? Number 16?

18 MS. ARNASON: I'm Debbie Arnason and I
19 live in Waynesboro, North Carolina and I am here
20 because I really care about clean air, clean
21 water, and clean government, and I think this is a
22 very important issue. I have brought my eldest of

1 10 grandchildren. That's my main reason for being
2 here. But other affiliations are Sierra Club,
3 Friends of the Earth, Carolina Clean Air
4 Coalition, Riverkeepers, Appalachian Voices, many
5 other groups because I really do care. And I hope
6 the Environment Protection Agency also cares and
7 will live up to its name to protect the
8 environment.

9 In this case, we need you to defend
10 citizens from coal-fired power plants dumping
11 their coal ash contaminants into ponds that leak
12 into public drinking water supplies. The states
13 have not been doing the job of monitoring toxic
14 metals like arsenic, lead, chromium, selenium,
15 iron, manganese into drinking water supplies.
16 Power companies obviously cannot be counted on to
17 monitor their own waste or even to switch to
18 healthy alternatives like solar, wind, and
19 geothermal. Only by calling these coal ash dumps
20 as they are, hazardous waste, and forcing them to
21 pay the real cost to the rest of us for coal will
22 they ever change.

1 We've all heard about the tragic coal
2 ash flood in Tennessee in 2008. I think EPA
3 monitoring could have prevented that. Here in the
4 Carolinas, Duke's Dan River coal ash pond is under
5 investigation for leaching into local drinking
6 water. The coal ash is full of arsenic stored on
7 the shorelines of Mountain Island Lake drinking
8 water supply, and that seems like an accident
9 waiting to happen.

10 Private power companies should be made
11 to pay for their -- our protection from poisonous
12 and radioactive wastes. Or better yet, invest in
13 truly clean energy fuel. If it becomes too
14 expensive to dump their harmful refuse on the
15 public, they will find the courage and dollars and
16 cents to change. We need the EPA to regulate coal
17 ash ponds across the U.S. as the hazardous waste
18 tanks they truly are.

19 I've got a note. I was feeling sorry
20 for the guys from the electric companies and the
21 cement companies and all that, you know, because
22 they say it's going to be too expensive and they

1 just can't do it fast enough and so on and so
2 forth. You know what? By allowing them to
3 continue to do this we are enabling them to
4 continue using cheap, dirty coal. And the rest of
5 us end up paying the cost of the coal in our
6 drinking water, in our air, in our water, and our
7 global warming and boy, that's really expensive.
8 So I would ask you please to take Subtitle C and
9 keep us safe.

10 One thing else I'm going to stick in
11 here and has nothing to do with this exactly, but
12 I want you to look into it: chloramine being used
13 in many drinking water supplies. Everyone knows
14 that chlorine and ammonia don't mix. You can see
15 the website at www.Chloramine.org. Thank you.

16 MR. DELLINGER: Thank you. Can we have
17 numbers 163, 17, 18, 19, and 300 move forward.
18 One reminder would be that if you have written
19 materials, if you could please put them in the box
20 over here to the left. Thank you.

21 Number 163?

22 MR. BIEBER: Good Afternoon, My name is

1 Paul Bieber and I am not affiliated with any
2 organization and I would like to thank you for the
3 opportunity this morning to participate in today's
4 hearing. I am here to tell you that a stigma is
5 already in place on CCRs and it is real.

6 I am a veteran in the CCR industry as
7 well as a victim of the negative label being
8 placed on recycled CCRs by the EPA. There is a
9 diminishing interest in these products due to the
10 possibility of a Subtitle C designation as a
11 hazardous waste.

12 I was recently displaced from a senior
13 management position with one of the largest coal
14 ash marketers due to the fact that many of our
15 customers were already seeking alternatives to fly
16 ash and utilization rates of CCRs and concrete,
17 block and encapsulated products were dropping
18 rapidly as many of the customers did ultimately
19 change raw materials.

20 This stigma is costing real live jobs
21 and is unnecessarily driving up the cost of
22 construction in an already challenged economy and

1 is doing exactly what the EPA said it would not
2 do, which is stopping the use of coal ash in
3 concrete.

4 Subtitle C is designated for truly
5 hazardous wastes and I am here to tell you that
6 consumers of fly ash today will stop using CCRs in
7 recycled encapsulated products if the EPA
8 designates any CCR as a hazardous waste or if a
9 hybrid solution is used to define usable or
10 non-usable based on its final application or
11 intended use. No fancy regulations will fool the
12 market. Previously being part of an international
13 corporation who embraced sustainable principles, I
14 urge EPA to do the right thing concerning coal ash
15 designation.

16 Because otherwise you have killed my
17 job, and you will kill the entire CCR recycling
18 industry with your Subtitle C approach. Stigma is
19 real and I am living proof. CCRs are utilized in
20 beneficial applications reducing landfilling of
21 the product and minimizing the potential for a
22 hazardous situation when managed onsite. It is

1 best to use it, recycle it into sound business
2 practices and encapsulated applications, and reuse
3 for its beneficial value. Not just sitting around
4 not being reused.

5 I strongly urge you to consider the
6 beneficial use of CCRS under a clear Subtitle D
7 designation and listen to sound, fact-based data
8 to guide you in your decision and final ruling.

9 Thank you.

10 MR. DELLINGER: Thank you. Number 17?

11 MR. STEELE: Thank you so much. My name
12 is Charles Steele Jr. I'm from Atlanta, former
13 president of the international organization
14 Southern Christian Leadership Conference, an
15 organization Dr. King co-founded with Dr. Lorry
16 and others. I was president for four and a half
17 years and I resigned to actually take on this
18 issue, the start of a business called Working
19 People For Fair Energy.

20 It has been so enriching for me to hear
21 previous speakers. They all have made excellent
22 points but what I'm concerned about is the fact

1 that we're not talking about poor people. We're
2 not talking about affordability. There are over
3 100 million poor people in this country.
4 (inaudible) can barely survive on a day-to-day
5 basis. But most of them are not; they're just
6 getting by. And I would love to see one of these
7 meetings over in a black church. Many of our
8 people are afraid to come out to the Holiday Inn
9 -- that some people call a Hole-iday Inn.

10 Because of the fact that there's a
11 cultural difference in terms of where we are in
12 the history of this country. So the twist that
13 I'm bringing is that we must be more intrusive,
14 and slow it down. We all believe in clean air,
15 clean water and a healthy environment, for all of
16 us. But somebody must pay for this. And the
17 brunt of these expenses will be upon minorities
18 and poor people due to the fact that they can't
19 afford what they have today. 75 to 80 percent, if
20 they are fortunate enough to work, of their wages
21 and their salary would be going toward
22 electricity.

1 Over half of the nation depends upon
2 coal. All I'm saying is that let's slow it down
3 and let's do it right. Is it affordable? Because
4 when you're dead, you're dead. I don't care if
5 it's about the environment or the lack of not
6 having a job or someone killing you at the local
7 convenience store because they saw you with a few
8 dollars. So is it affordable? Are we
9 representing the interests of poor people? I
10 don't see any African-Americans in here, no more
11 than two or three. And two of them just left. So
12 there's two of us, brother.

13 So the point being, they don't even know
14 about this issue. They don't even know about the
15 concerns that are affecting us because they don't
16 even have time to pay attention to it. Because
17 they are too busy trying to make a living. Thank
18 you so much, and God bless you.

19 MR. DELLINGER: Thank you. Number 18?

20 MS. HALE: Hello. My name is Kendall
21 Hale. I live in Fairview, North Carolina, and I
22 am a member of the Canary Coalition. While I

1 agree many poor people don't know -- but to tell
2 you the truth, I only learned about hazards of
3 coal ash, and I'm an educated person. I've been
4 an activist all my life and a concerned citizen.
5 I only learned about it in about the last six
6 months and, boy, did I start getting frightened.
7 Not only does coal ash contain arsenic, lead and
8 other heavy metals that can poison local water
9 supplies endangering the environment and public
10 health -- I learned this just last week -- and
11 it's also radioactive.

12 Richard Rhodes, author of The Twilight
13 of the Bomb, stated earlier this month in a letter
14 to the New York Times editor in response about the
15 hazards of coal ash, that coal ash contains
16 significant quantities of uranium and thorium, two
17 mildly radioactive elements. He reminds us that
18 the U.S. Atomic Energy Commission in the early
19 1950s seriously considered extracting uranium from
20 coal ash for atomic bombs.

21 Why is this relevant today? Burning
22 coal concentrates these two metals and their

1 radioactivity in coal ash. And one must ask: Why
2 is it that we forbid nuclear power plants from
3 releasing radioactive material except under
4 careful sequestration, but we permit coal-fired
5 plants to do so? Clearly, we need tough Federal
6 laws to designate coal ash as a hazardous waste
7 and to require industry to phase out these porous
8 sludge ponds. I live near one by Julian. I'm
9 very concerned about my community and all of the
10 area around Asheville.

11 And the other proposal to lead coal ash
12 as a nonhazardous substance regulated by the State
13 will continue to endanger public health, and that
14 means you and me.

15 Thank you.

16 MR. DELLINGER: Thank you. Number 19.

17 MR. NOBLE: Good morning. And welcome,
18 again, to Charlotte, North Carolina; ground zero
19 for the Catawba River Basin. We appreciate your
20 visit to the Carolinas to hear our concerns.

21 My name is Rick Noble. I'm the chairman
22 of the Catawba Riverkeeper Foundation, which

1 represents the two-million-plus people who depend
2 on the Catawba River Basin for not only their
3 drinking water, but also their recreation and
4 other forms of their livelihood.

5 My official comment is as follows:

6 Coal- fired power plants are poisoning our waters
7 with coal ash; a waste product that contains
8 arsenic, barium, chromium, mercury, selenium,
9 lead, and many other heavy metals. Constant
10 discharges of this toxic substance are slowly
11 filling and killing our local waterways. EPA must
12 protect our most precious assets; the water. For
13 decades, power plants have carelessly dumped coal
14 ash into ponds and landfills that leak into our
15 drinking water, whether ground or surface
16 waterways. Our drinking water supply cannot
17 incorporate constant discharges of arsenic and
18 other heavy metals and remain a viable community
19 asset for generations to come.

20 It's time for the EPA to set strong,
21 Federally enforceable safeguards such as those in
22 Subtitle C that protect our health, our

1 communities and our future. I ask you to please
2 protect our drinking water, our security, our
3 well-being, and that, personally, of my
4 grandchildren.

5 Thank you.

6 MR. DELLINGER: Thank you. Number 300.

7 MR. SIMON: My name is James Simon. I'm
8 with Separation Technologies. I'm here to speak
9 on opposition 2 designation under Subtitle C.
10 Separation Technologies operates a fly ash
11 separation facility at the Roxboro plant. We
12 separate carbon from fly ash so that the ash can
13 be used in ready mix concrete. We've operated the
14 plant for almost 14 years. We have processed over
15 2 million tons of fly ash that would otherwise
16 have gone into a landfill, and sent that for
17 beneficial use in the concrete. Our operation is
18 clean, safe. We have gone ten years without a
19 loss- time accident, and I invite people to come
20 and visit us.

21 Fly ash for beneficial use is going to
22 get tarred with the same brush as fly ash

1 designated as hazardous waste. People aren't
2 going to split that hair. And the reduction in
3 the amount of fly ash used in concrete is just
4 going to go in landfills; no other place for it to
5 go.

6 Our operation helps the community, it
7 helps the utilities, it helps the concrete
8 producers. And I ask that the EPA not do anything
9 that's going to interfere with that going forward.

10 Thank you.

11 MR. DELLINGER: Thank you. Is number 20
12 here?

13 (No audible response.)

14 MR. DELLINGER: All right. We'll go to
15 number 21, 23, 24, 77, and 301.

16 MR. KNOWLES: My name is Jimmy Knowles.
17 I am the vice president of Research and Market
18 Development for The SEFA Group. We are a small
19 family-owned and operated business with 154
20 employees. We are located in the Carolinas and
21 operate throughout the Southeast and mid-Atlantic
22 states. Managing and marketing coal combustion

1 residues is our only business. We market over one
2 million tons of fly ash, which are recycled
3 concrete products and structures each year.

4 I began working with coal ash in 1977
5 and I began working for The SEFA Group in 1982.
6 We composite and test representative samples of
7 all the fly ash that we market. We analyze and
8 characterize fly ash in a number of different
9 ways, including the quantification of trace
10 elements and determination of toxicity. Over the
11 last 33 years, I have developed an intimate
12 understanding of coal ash, and the facts are
13 clear: Fly ash is not hazardous and, therefore,
14 disposal of fly ash ought not be under Subtitle C.
15 Fly ash is very similar to other competitive
16 materials whose disposal is not regulated under
17 Subtitle C. Listing and regulating fly ash under
18 Subtitle C will reduce the volume of fly ash that
19 is beneficially used.

20 Of course, the EPA knows that the
21 characteristics of coal fly ash, in and of itself,
22 do not have the hazardous properties necessary to

1 be regulated as hazardous waste. Therefore, the
2 EPA is proposing to call coal fly ash a special
3 waste and to exercise its right to list and
4 regulate fly ash under Subtitle C -- the hazardous
5 waste section of the law -- because it is capable
6 of posing a potential hazard to human health or
7 the environment when improperly managed.

8 So, EPA doesn't claim that coal fly ash
9 is hazardous, but rather that it could pose a
10 potential hazard if it is mismanaged. Obviously,
11 we agree with EPA in principle. However, the
12 disposal of CCRs should be properly regulated in
13 such a way as to prevent mismanagement. However,
14 we strongly disagree that coal fly ash needs to be
15 listed and regulated under the hazardous waste
16 section of the law. Coal fly ash that is destined
17 for disposal could just as easily be called a
18 nonhazardous special waste and regulated under a
19 nonhazardous section of the law. Regardless,
20 because coal fly ash is not hazardous, it should
21 not be listed and regulated under the hazardous
22 waste section of the law.

1 Coal fly ash is very similar to other
2 competitive materials. There is a substantial
3 amount of research data that shows what I have
4 personally confirmed through numerous
5 characterizations of competitive products: Coal
6 fly ash is not significantly different -- either
7 in concentration of trace elements or toxicity --
8 than competitive materials that would otherwise be
9 used. These materials also pose a potential
10 hazard if their disposal is mismanaged, but EPA
11 does not consider them to be disposed under
12 Subtitle C.

13 Listing and regulating coal fly ash
14 under Subtitle C will reduce the volume and value
15 of fly ash that is beneficially used. Coal fly
16 ash has always had some level of stigma attached
17 to it.

18 However, if the EPA were to list coal
19 fly ash as a special waste under Subtitle C, then
20 the public will consider it to be a hazardous
21 waste. EPA may think that calling it a special
22 waste -- rather than a hazardous waste -- is a

1 clever way to avoid stigma and, therefore,
2 maintain robust market in the concrete industry.
3 However, from the perspective of the general
4 public, the term "special waste" is a distinction
5 without a difference. The public will consider it
6 to be hazardous.

7 Thank you.

8 MR. DELLINGER: Thank you. Number 22.
9 I'm sorry. Number 23.

10 MR. PRICE: My name is Charles Price. I
11 am president and CEO of Charah, and I'm testifying
12 today on behalf of Charah and its 225 employees in
13 11 states who are committed to recycling coal
14 combustion by- products and the benefits this
15 recycling has for our environment and the
16 construction industry. Beneficial use of CCRs
17 save landfill space and avoid use of manufactured
18 products which require virgin materials and energy
19 to manufacture. A successful CCR recycling
20 program is good for the environment and should be
21 supported by EPA through its regulations.
22 Regulations of CCR disposal can be done without

1 causing harm to the recycling program that are
2 prevalent throughout our U.S. economy. The stigma
3 associated with regulating CCBs under hazardous
4 waste Subtitle C is real.

5 I have an ad from the manufacturer of
6 lightweight material that competes with bottom
7 ash. The ad reads: "WARNING SIGNS OF UNHEALTHY
8 RAW MATERIAL ARE HERE AND IT'S CALLED COAL BOTTOM
9 ASH." The ad goes on to say the liability issues
10 are too great to allow this waste material to be
11 used in building materials. EPA's assumption that
12 Subtitle C regulations will result in an increase
13 of beneficial use are not correct.

14 Customers that use CCBs are concerned
15 over the labeling of CCBs as a hazardous material.
16 Our experience and this example prove this
17 recycling will decrease, if not end all together,
18 if EPA regulates CCRs under Subtitle C. Simply
19 stating that CCRs are exempt if beneficially used
20 is not sufficient to put the legal liability fears
21 to rest.

22 The protective features proposed by the

1 EPA for CCRs landfills under Subtitle C and
2 Subtitle D are essentially the same; therefore, a
3 Subtitle D regulation program by EPA's own
4 description will provide the necessary protection
5 and would avoid further damage to the CCP
6 recycling industry.

7 Subtitle D approach is clearly the
8 appropriate record for a mechanism that will
9 protect the environment and avoid damage to the
10 recycling industry. Regulations under the
11 Subtitle C approach will not provide added
12 environmental benefits as described by EPA in its
13 economical analysis. EPA assumes the growth in
14 the beneficial use of CCRs will not occur. The
15 stigma impact will harm our industry and result in
16 the loss of jobs.

17 MR. DELLINGER: Thank you. Number 24.

18 MR. WALLACE: Good morning. I'm David
19 Wallace, and I'm with JP Donmoyer. We're a
20 transportation company. We transport ash and have
21 been for about 25 years. We are also an active
22 participant in the EPA's monthly program. We have

1 over 250 employees that work daily with over 15
2 coal generation plants with the delivery of lime
3 and the self-realization of admissions as well as
4 the disposal results in carbon ash. We've
5 transported millions of tons of lime and coal ash

6 over the past 25 years. We have identified no ill
7 effects in any aspect for any employees in any
8 association of any materials associated with any
9 coal generation plants. That's a fact.

10 Coal is a natural decomposition of
11 vegetation of over eons of time. As a fossil
12 fuel, this abundance in this nation provides us a
13 heat source that produces electrical power highly
14 efficient in a safe manner upon demand. It has,
15 and continues, to play a vital role in the welfare
16 of our industries, the wealth of our nation and
17 the future of our children. We should be
18 celebrating our good fortune rather than debating
19 questionable ruling as to deem this natural
20 product is a hazardous material.

21 Beneficial uses for coal ash that our
22 company directly participates in includes all

1 forms of commercial buildings, construction of
2 highways, buildings, industrial sites, homes.
3 Coal also serves to purify acidity in the aquifer
4 to improve the quality of water. In the state of
5 Pennsylvania we moved thousands of tons of coal
6 generation ash from mine sites where it's used to
7 neutralize the city and the water. The state of
8 Pennsylvania actually pays incentives for us to do
9 this.

10 I support coal ash disposal regulations
11 that protect human health and the environment
12 while encouraging greater recycling of coal ash.
13 These goals cannot be accomplished if the
14 Environmental Protection Agency designates coal as
15 hazardous special waste. People will not want a
16 material in their homes and schools and
17 neighborhoods that is considered hazardous at
18 landfill. Businesses will not want to risk being
19 sued for material that's considered hazardous at
20 landfill. We risk losing the environmental
21 benefits that come from recycling millions of tons
22 of this material, including conserving landfill

1 space and natural resources as well as avoiding
2 the emissions of tons of millions of tons of
3 greenhouse gases for the manufacturing materials
4 recycled coal replaces.

5 The EPA should -- can and should enact
6 new regulations while encouraging the safe
7 recycling of coal ash as a preferred alternative
8 disposal. To do so, EPA must not designate coal
9 ash as a hazardous special waste.

10 Thank you.

11 MR. DELLINGER: Thank you. Number 77,
12 number 301.

13 MR. SLATE: Hello. My name is Jim
14 Slate, and I'm with Separation Technologies. As I
15 look around the room, I see all of us have our
16 little pins and our little badges. Our mind is
17 already set on what we think about this, and
18 there's nothing that I'm going to say that's going
19 to change your mind about the way that you feel
20 about it.

21 So what I would like to say is, about
22 four months ago I was employed by Separation

1 Technologies. They gave me a job when I was out
2 of work. I now have a paycheck at the end of the
3 week. I have insurance and I have benefits;
4 something many of us don't have. I actually work
5 in the silos where fly ash is produced, which goes
6 into concrete products. I have only been there
7 four months, but I work with people who have been
8 there for 13 years plus. I work with no one that
9 is sick, no one that coughs, nobody that misses
10 work because of illness, at least in the four
11 months that I have been there.

12 Once again, I am not going to change
13 your mind about what you think, but I know that if
14 it was deemed hazardous it would affect our sales
15 and our business and I may be out of work again.

16 Thank you for your time.

17 MR. DELLINGER: Thank you. Will number
18 25, number 28, number 78, and number 302 move
19 forward. Number 25.

20 MR. BATTEN: I'll speak fast. I hope
21 everybody listens quickly. Good morning. My name
22 is Henry Batten. I'm the president of Concrete

1 Supply Company.

2 In my humble opinion, this agency is
3 pursuing the wrong approach with respect to its
4 efforts to label fly ash with Subtitle C
5 classification. Your theories that we're
6 providing language for beneficial use only, no one
7 will consider it a hazardous material if you
8 stipulate it not hazardous when used as a
9 beneficial use. It is inconceivable to believe
10 that a load of fly ash that leaves the plant and
11 turns left is hazardous, and turns right is not.
12 The construction community will simply view the
13 product as hazardous, period, thus the only
14 possible outcome is that fly ash will be used less
15 and will have to be disposed of in a landfill,
16 thus, I believe you make the problem worse.

17 Surveys of ready mix concrete producers
18 show that over 55 percent of all ready mix
19 concrete contains fly ash. There's actually no
20 reason why all the concrete manufacturer does not
21 include fly ash. The real opportunity is to
22 rapidly influence the specifier community and

1 incorporate fly ash in the remaining 45 percent of
2 concrete produced, thereby increasing the demand
3 for fly ash and severely and substantially
4 reducing that amount, which gets placed in
5 landfills.

6 Buildings contribute to nearly 40
7 percent of all CO2 emissions. With the full
8 support of the EPA and the government, you could
9 help reduce these emissions by nearly 5 percent by
10 supporting construction of homes and commercial
11 structures with concrete manufactured with fly
12 ash. This nearly equals 123 million metric tons
13 of CO2 for more than 30 coal-powered plants, or
14 the entire cement industry's emissions.
15 Furthermore, if you carry the same logic to the
16 construction of concrete roads, emissions over the
17 life of the road could be reduced by 50 to 70
18 percent.

19 MIT is currently performing
20 nanotechnology- level research, which could
21 greatly increase the amount of fly ash that can be
22 used in a yard of concrete while maintaining the

1 performance requirements of the application, which
2 could mean even greater beneficial use of fly ash
3 in the future.

4 With the support of EPA and other
5 governments, in general, and lastly, a structural
6 change to your approach to this regulation, we
7 could change the current construction practices to
8 incorporate more fly ash beyond the 30 million
9 tons the industry would have achieved on its own,
10 thereby truly reducing and moving toward a
11 sustainable path of overall CO2 reductions. Thus,
12 40 percent of the CO2 being emitted could be
13 reduced by 30 percent by your very action.

14 By incorporating my approach, you change
15 the methodology from simply being concerned about
16 the quality aspects of a landfill for storing fly
17 ash, which should remain a direct responsibility
18 of the states to supporting the increased use of
19 fly ash reducing the need to store the material
20 all together and reducing overall CO2 making our
21 environment actually better, not worse.

22 Thank you.

1 MR. DELLINGER: Thank you. Number 28.

2 DR. FIREMAN: Hello. My name is Richard
3 Fireman. I live in Mars Hill, North Carolina.
4 I'm a retired medical doctor and currently work
5 for the North Carolina Council of Churches; a
6 program called Interfaith Power and Light. I
7 retired to work on issues of great concern to me;
8 the sustainability of our beautiful home, the
9 earth.

10 You have heard before and will continue
11 to hear from many that the regulation of coal ash
12 is primarily about values -- what we as a people
13 value -- love, our ethical and our moral systems,
14 and trust, that if we hold to those values, the
15 opportunity for fulfilling a healthy life for
16 ourselves and our descendants and all of God's
17 creation will endure and flourish.

18 All of our faith traditions rest on a
19 fundamental proposition. Stated negatively, it's
20 "Do no harm." Stated positively, it's a variation
21 of "Love God and your neighbor as yourself." A
22 secular version beautifully written is the

1 Preamble of our Constitution; "We the people of
2 the United States, in order to form a more perfect
3 union, establish justice, insure domestic
4 tranquility, provide for the common defense,
5 promote the general welfare and secure the
6 blessings of liberty to ourselves and our
7 posterity, do ordain and establish this
8 Constitution." The language is clearly one of
9 values; justice, general welfare, the health and
10 integrity of our ecosystems, and for the good of
11 the whole and for our posterity.

12 Given these values, we are outraged that
13 the leaders of our State government have asked the
14 EPA not to regulate coal ash as a hazardous waste.
15 With our government's approval; Eugene Conti, the
16 Secretary of the Department of Transportation;
17 Robert Gruber, the executive director of the
18 public staff of the Utilities Commission; and J.
19 Keith Crisco, the Secretary of the Department of
20 Commerce, wrote to Senator Burr and Lisa Jackson.
21 All wanted business as usual. It's particularly
22 egregious that the director of the public staff

1 asked for regulations that would not protect the
2 public health based on sound science and Federal
3 law. And the science and law are clear; the
4 chemicals in coal ash meet the requirements of the
5 Resource Conservation and Recovery Act's
6 definition of "hazardous waste."

7 Furthermore, the more we know about the
8 chemicals, we know that we should be worried.
9 There is new science that says there is a field
10 basis of adult disease based on very small amounts
11 in utero. History is our guide that the
12 regulators of North Carolina will do more to
13 protect the bottom line of business of
14 corporations and industry in our state than the
15 public health.

16 Harm has already occurred. It's clearly
17 time to protect the public health; the highest
18 value of all, God's creation. We ask you to
19 choose Option C (sic) and classify coal ash as a
20 hazardous waste. Thank you.

21 MR. DELLINGER: Thank you. Number 78.

22 MR. HULING: Good morning. I'm Chuck

1 Huling, the vice president of environmental
2 affairs for Georgia Power, the largest subsidiary
3 of Southern Company. Georgia Power serves over 2
4 million customers. The company and its customers
5 will be impacted by the final coal combustion
6 by-products of CCB rules, so I appreciate the
7 opportunity to speak today.

8 First, Georgia Power supports protection
9 of the environment in safe management of CCBs.
10 Georgia Power remains committed to the appropriate
11 criteria to ensure dam safety and the integrity
12 that the public can rely on. Georgia Power also
13 supports the regulations of CCBs in a manner that
14 establishes reasonable minimum standards while
15 recognizing the variability of each site. EPA's
16 proposed Subtitle D Prime approach recognizes that
17 existing CCB impoundments should be allowed to
18 continue operating with State oversight.

19 Second, Georgia Power believes that
20 State agencies should regulate CCBs. EPA's own
21 conclusions in 1993 and in 2000 recognize that
22 states should continue to be the primary

1 regulators of CCBs. Georgia and other states have
2 operational experience and have provided effective
3 oversight of CCBs through wastewater programs,
4 landfill disposal, closure of surface
5 impoundments, and beneficial reuse.

6 Third, Georgia Power opposes the
7 regulation of CCBs as a hazardous waste. After 20
8 years of study, EPA concluded in 1993 and in 2000
9 that CCBs did not warrant hazardous waste
10 regulation. This regulation, even with an
11 exemption, unravels decades of progress of
12 beneficial reuse. CCBs are one of America's
13 recycling success stories with approximately 43
14 percent diverted annually from landfills.

15 Regulation under hazardous waste
16 requirements will be cost prohibitive without a
17 corresponding benefit to the environment. In
18 addition, proper disposal of hazardous waste may
19 be impossible for the foreseeable future because
20 of the cost and lack of permitted disposal
21 capacity. Any mandatory phase out of CCB wet
22 management practices would exacerbate these

1 concerns.

2 To conclude, Georgia Power supports dam
3 integrity and a performance-based approach for
4 management of CCB units with State regulatory
5 oversight and enforcement. Georgia Power opposes
6 the regulation of CCBs under RCRA Subtitle C
7 recognizing that this approach does not provide
8 additional health or environmental protections.
9 Hazardous waste regulations will impact CCBs
10 beneficial reuse and potentially eliminate decades
11 of progress made in the recycling of this valuable
12 product.

13 Thank you.

14 MR. DELLINGER: Thank you. Number 302.

15 MS. CRIFIELD: My name is Bonnie
16 Crifield from Ringgold, Virginia. I have been a
17 machine operator for Separations Technology for 13
18 years. And I'm here in opposition of Subtitle C.
19 I see this as calling my plant to go away. If you
20 place a hazardous waste name on fly ash, people
21 that we supply are no longer going to be
22 interested in product.

1 The larger companies, well-educated, may
2 still buy it, but the homeowners and the smaller
3 companies are only going to see the big words; the
4 hazardous waste problems. And for me, this is the
5 only job I've known other than homemaker. So I
6 wanted to come today and place my bid for
7 opposition of Subtitle C.

8 Thank you.

9 MR. DELLINGER: Thank you. Numbers 26,
10 27, 29 and 30. Number 26.

11 MS. BATTLE: My name is Alice Battle.
12 Currently, I am the Mountain Island Lake
13 Lakekeeper. I'm also a former Mountain Island
14 Marine Commissioner.

15 I'm here to testify in support of
16 Subtitle C. The 80-year-old Riverbend steam plant
17 has two coal ash ponds on site, which have been
18 returning water to Mountain Island Lake for that
19 number of years. Currently, the lake provides
20 potable water to almost one million people in the
21 Metrolina area. As such, it has a value to the
22 region that far exceeds its size. In addition,

1 many people use the lake for recreation, such as
2 boating, fishing and swimming. The effluence from
3 the plant has only been tested for arsenic in the
4 last couple of years. Both the Catawba
5 Riverkeeper Foundation and Mecklenburg County's
6 Water Quality Program found excessive amounts of
7 arsenic in the samples near the discharge from the
8 ash ponds. The discharge area is shallow and full
9 of the sediment. The sediment in the lake is
10 mostly clay, which has fine particles that
11 re-suspend easily. Heavy metals like arsenic
12 adhere to the sediment.

13 Mountain Island Lake is one of the
14 smallest lakes in the Catawba chain and is below
15 the largest lake, Lake Norman. Water is moved
16 through Mountain Island Lake rapidly when there is
17 excessive precipitation. The currents can be
18 quite strong at times, so the sediment is moved
19 downstream of the discharge. Testing for all
20 heavy metals is not done. The metals in the
21 sediment climb their way into the food chain of
22 the fish that live in the lake. Fish acquire

1 contaminants and concentrate them in their tissues
2 by uptake from water and through ingestion. Fish
3 can often bioaccumulate chemicals at levels more
4 than a million times the concentration detected in
5 the water column. This limits the fish as a
6 source of food for humans, but it also finds its
7 way into the tissue of animals and birds that
8 depend on fish as a source of food.

9 What is the effect on humans who ingest
10 the water for years? Even though the amounts of
11 heavy metals in water columns may be undetectable
12 by current measurement standards, the effect is
13 not known. We know that the heavy metals are
14 introduced into the lake.

15 We also don't know if heavy metals and
16 sediment cause contact problems in humans such as
17 skin rashes and other irritants. The safe levels
18 of heavy metals in the water currently used are
19 more the results of politics than of scientific
20 study.

21 Years of abuse of the nation's rivers
22 and streams have produced measurable amounts of

1 contaminants in most of the lakes in the United
2 States. Monitoring cannot be left to the goodwill
3 of companies whose motivation is money, not the
4 welfare of the future generations. Their
5 self-monitoring is what has contaminated waterways
6 in the first place.

7 MR. DELLINGER: Thank you. Number 27.

8 MS. DANZI: Good afternoon. Thank you
9 for coming and letting us speak at the hearing.

10 My name is Ann Danzi, and I am a
11 commissioner on Mountain Island Lake, and I'm also
12 a very concerned citizen.

13 I live across the street from the
14 Riverbend plant in Mt. Holly. Something that
15 hasn't been touched on in the articles that I've
16 read is, what happens when the energy firms have
17 the ponds and they are full? They remove the ash
18 and store it in enormous piles without liners in
19 various areas in the facility.

20 About three years ago, Duke found it
21 necessary to empty the ponds at the Riverbend
22 plant. For weeks, as they drained the pond and

1 moved the resultant dry ash, tiny black particles
2 flew all over our cars and our homes. They tried
3 to cover the trucks, et cetera, but when it's dry,
4 this ash is very, very tiny particles. Many
5 residents of my Stonewater development complained.
6 They could see the ash accumulating on our cars
7 and our houses. What we couldn't see was how much
8 was accumulating, how we breathed it. Duke piled
9 this residue in a very large mound -- about half
10 the size of a football field -- right beside
11 Horseshoe Bend Beach Road, which is the only
12 access to the peninsular we live on. They told
13 the residents the ash would not be a problem and
14 proceeded to plant grass on it to hold it in
15 place. A large mound with grass on it and heavy
16 rain; what do you think happened? It's running
17 down and the water is seeping through this mound
18 and it could be going into our groundwater. My
19 concern is air as well as water quality.

20 My development is on City water and
21 sewer, but the rest of that peninsular is on well
22 water, and we will have no idea of what is

1 leaching into that well water until it is too
2 late. That mound is not monitored in any way;
3 it's not near the water where monitors have been
4 installed. It's on the other side of the
5 facility. This is a very big concern to me.

6 The other one is, what happens when this
7 plant closes? Erin Cuthbert of Duke has already
8 said in 2015 they will close Riverbend plant. It
9 makes no economical business sense for us to
10 dredge and line these ponds when we are about to
11 close it. That's true. They are a profit-making
12 company.

13 So I think, unless you pass Option C
14 (sic), they will never be mandated to do this.
15 And to say that the citizens have a right to sue
16 is just ridiculous. Where would we get the staff
17 and the money to do so and fight something like
18 Duke Power? Please go with Option C (sic).

19 Thank you very much.

20 MR. DELLINGER: Number 29.

21 MR. HUDSON: My name is Jay Hudson, and
22 I'm the environmental manager at Santee Cooper.

1 Santee Cooper is South Carolina's state-owned
2 electric and water utility. We indirectly and
3 directly serve over two million South Carolinians.
4 And one of our most successful environmental
5 stewardship programs is the recycling of coal
6 combustion by-products.

7 I'd like to say that Subtitle C option
8 that EPA proposed represents the most extreme,
9 costly and burdensome option without proportional
10 environmental benefit. Regulating CCRs under
11 RCRA's hazardous waste controls would have an
12 adverse impact on beneficial use in South Carolina
13 and around the country. Santee Cooper has a very
14 successful recycling program, which emphasizes the
15 beneficial use of both ash and gypsum.

16 Santee Cooper's sale of gypsum over the
17 last five years is over 75 percent of the total
18 production. Gypsum, which is predominately
19 calcium sulfate, can be safely used in the
20 production of drywall and as an agricultural soil
21 amendment. Using gypsum saves the environmental
22 impacts associated with mining the natural

1 mineral.

2 More importantly, gypsum does not meet
3 any of the criteria set forth under RCRA for
4 hazardous waste. Various lab tests have been
5 conducted on the gypsum at Santee Cooper gypsum,
6 and results showed gypsum does not have any
7 hazardous waste properties.

8 We also successfully recycle fly ash and
9 bottom ash in order to minimize the use of ash
10 ponds and landfills. When fly ash is encapsulated
11 in concrete or cement, this is an environmentally
12 responsible reuse program.

13 In spite of the Rule's claim to the
14 contrary, labeling gypsum and other CCRs as
15 hazardous waste will impact recycling. Examples
16 which EPA cites to support the claim that
17 hazardous waste regulation would actually increase
18 beneficial use do not support that viewpoint. In
19 a case of used oil, a program EPA uses as a model
20 for CCR hazardous waste regulation, EPA determined
21 not to regulate used oil as a listed waste
22 precisely because of the adverse impact on used

1 oil recycling.

2 We are already seeing negative impacts
3 from the proposed regulation on recycling efforts.
4 Companies selling alternative raw materials to
5 recycle bottom ash are touting their product as
6 nonhazardous in an attempt to gain market share in
7 the lightweight aggregate market.

8 The Subtitle C option would overwhelm
9 existing Subtitle C disposal capacity increasing
10 by 50 fold the volume of hazardous waste disposed
11 on annually in landfill units. The shortfall is
12 especially severe in South Carolina, since no
13 hazardous waste disposal facilities in the state
14 could receive any of these CCRs. A significant
15 amount of the CCRs produced by Santee Cooper under
16 the Subtitle C option would have to be hauled long
17 distances for disposal, thus increasing road
18 traffic, greenhouse gas emissions, and drastically
19 increasing disposal costs when environmental
20 responsible disposal and recycling options are
21 available at a much lower cost.

22 For those reasons, the Subtitle C option

1 will cause an undue burden without environmental
2 benefit. Santee Cooper appreciates the
3 opportunity to present these comments and will be
4 submitting additional written comments.

5 Thank you.

6 MR. DELLINGER: Thank you. Number 20.

7 MR. BROWNHILL: Good morning. My name
8 is Ryan Brownhill, operations manager for Sphere
9 One, Incorporated. We are the largest marketer of
10 domestically sourced cenospheres in the United
11 States and employ roughly 45 people. Cenospheres
12 are inert, lightweight microspheres that are used
13 in encapsulated building, refractories and
14 recreational products.

15 I need to address the inherent stigma
16 issues that have and will occur. The EPA has
17 repeatedly stated they don't believe a Subtitle C
18 regulation will create a stigma against CCPs and
19 they, in fact, increase the amount of CCPs
20 recycled.

21 I can tell you emphatically, that is
22 simply not true. We talk to our customers every

1 day and can say with certainty that a Subtitle C
2 designation is and will absolutely stigmatize
3 CCPs. In fact, the negative stigma has already
4 affected our business in several ways. One major
5 supplier suspended operations of their sites until
6 the EPA issues a final ruling and the supplier
7 sees that CCPs are not classified as nonhazardous
8 waste. The loss of this supply has caused a
9 shortage of a raw material, and we will lose a
10 significant, valuable product line and jobs will
11 be at risk.

12 During a recent contract negotiation, a
13 supplier has insisted on wording that will
14 immediately void the contract if cenospheres are
15 listed as a Subtitle C waste. The special waste
16 designation won't make a difference. Last year we
17 began working with a company on developing a new
18 application for cenospheres. Once the proposed
19 Rule came out, the work was suspended. They were
20 not willing to R&D time and money on potentially
21 hazardous material.

22 What's important about all these

1 examples is that they show the stigma is real and
2 is negatively impacting our business right now,
3 even though there is only the possibility of a
4 Subtitle C designation. It stands to reason that
5 this statement can only get worse if there is a
6 hazardous designation.

7 By far, the most compelling proof of the
8 negative impact comes from our existing customers.
9 Our largest customers told us that they will stop
10 use of cenospheres should CCPs be classified as a
11 Subtitle C waste.

12 What this adds up to for us is the
13 effective end of our business. Between the
14 immediate loss of our customer base and the loss
15 of our raw material supply, we will not be able to
16 continue a viable operation.

17 The EPA has a great responsibility here.
18 The marketers of CCPs are united in their stance
19 that Subtitle C will carry a stigma and damage the
20 reuse of CCPs. It isn't insignificant; it's real,
21 hurting real businesses, hurting real people. The
22 environment can be protected with strong

1 regulations under Subtitle D.

2 We in the recycling CCP industry support
3 strong relation (sic) of CCRs under Subtitle D with
4 Federal enforcement authority. The EPA can't be
5 afraid to lead. With our economy sputtering, you
6 would think the EPA could work with Congress, get
7 direct enforcement authority, and proceed to
8 regulate CCRs under Subtitle D without creating
9 this damaging stigma for CCPs.

10 If there is even some question about how
11 Subtitle C classification will be detrimental to
12 business, why do it, especially when there is a
13 technically sufficient solution that carries
14 virtually no risk to the beneficial use of CCPs?
15 A Subtitle D classification allows the EPA to live
16 up to its responsibilities to protect the
17 environment as well as its responsibility to all
18 the hard working Americans whose livelihood
19 depends on the reuse of CCPs.

20 Thank you.

21 MR. DELLINGER: Thank you. Numbers 31,
22 32, 153 and 191. How about 303 and 304?

1 (No audible response.)

2 MR. DELLINGER: All right. Number 31.

3 MR. DUNLAP: Thank you. My name is
4 Randy Dunlap, and I am president of Separation
5 Technologies and Essex Cement, both of which are
6 Titan American companies.

7 I am here in strong support of the
8 regulation of CCR landfills, but in strong
9 opposition of the Subtitle C. Separation
10 Technologies is a company with more than 100
11 employees involved in the processing of fly ash.
12 We have a patented zero emissions technology that
13 removes carbon from fly ash, thereby taking a fly
14 ash that would normally have to be landfilled and
15 turning it into a high-quality product use as a
16 partial replacement for Portland cement and
17 concrete. Our business model entails providing a
18 100 percent solution to the utility industry with
19 respect to their CCRs.

20 My purpose in bringing this up is that
21 if the EPA's assumptions under Subtitle C are
22 correct -- and those assumptions are that not only

1 will a C designation not be detrimental to
2 beneficial use, but, in fact, will likely increase
3 beneficial use -- then my company would stand to
4 benefit probably more than any other in the
5 industry. We would, in fact, sell more CCRs and
6 the demand for our technology would increase
7 dramatically. Yet, here I am in strong opposition
8 to Subtitle C and in support of the regulation of
9 landfills under D.

10 I must admit that it is somewhat
11 frustrating to continue to hear the EPA state that
12 you are not convinced by the stigma argument, when
13 those of us in the industry so clearly see the
14 serious risk to beneficial use. And the arguments
15 expressing concern over the potential stigma are
16 coming from those in the industry that are not
17 impacted, certainly not negatively impacted, by
18 tough regulations of CCR landfills. In fact,
19 those making the stigma argument would actually
20 stand to benefit from Subtitle C if the EPA's
21 assumptions are correct.

22 So why do we oppose Subtitle C? We

1 oppose it because EPA's arguments simply are not
2 credible. If I could just give you a couple of
3 small examples: One Sierra Club ad: "Coal ash --
4 it's toxic -- it's everywhere -- we must act now!"

5 I must apologize, but I missed where it
6 clearly stated -- or stated anywhere, for that
7 matter -- that beneficial use is okay. The
8 legislative director for Natural Resources Defense
9 Council makes the argument for us in his blog
10 where he and many other proponents of "C" disputes
11 the stigma claim by the CCR industry. He quotes a
12 recent survey by the NRMCA, the National Ready Mix
13 Concrete Association, to support his position that
14 stigma argument is a misdirection. Quote, "A
15 survey by the NRMCA shows that companies that use
16 fly ash, over 69 percent will continue to use it
17 even if it is 'hazardous.'" So I guess as an
18 industry, we are to accept a decline over a third
19 of our sales, over 5 million tons per year, and
20 this is just encapsulated uses alone. It doesn't
21 consider that the other implications by homeowners
22 and other specifiers that will refuse to use fly

1 ash because of hazardous designation.

2 In conclusion, I hope that the EPA would
3 give appropriate weighting to the testimony and
4 written comments from those in the industry that
5 are opposing Subtitle C and who have no other
6 motivation to do so, other than the fact that
7 based on their years of experience, they
8 understand the significant negative impact that
9 such a classification will have on future
10 beneficial uses of the CCRs. The only option is
11 Subtitle D.

12 Thank you.

13 MR. DELLINGER: Thank you. Number 32.

14 MS. ARNOLD: I'm Jane Arnold. I'm an
15 owner and manager of Southern Concrete Materials,
16 Eastern Division. I want to go over with you a
17 few points why I am against Subtitle C, why I feel
18 like fly ash is helpful rather than hazardous to
19 our industry.

20 Southern Concrete has produced and
21 delivered concrete primarily in Western North
22 Carolina and the Charlotte regions since it was

1 formed in 1958. The National Ready Mix Concrete
2 Association has stated that fly ash is present in
3 over 55 percent of concrete produced. I would be
4 willing to say that the percentage of fly ash
5 concrete we have produced is closer to 70 percent.

6 In explanation, the fly ash is delivered
7 to our plants in tanker trucks. We place it in
8 silos and eventually weigh it up and batch it into
9 the mix, which then becomes a plastic concrete.
10 At this point, our driver delivers the concrete to
11 our customer in a specially designed truck that
12 continues to mix the plastic concrete until it is
13 discharged to the customer. Generally, our
14 customers are not the end user, but will be the
15 company that places or forms the plastic concrete.
16 We might sell to a one- or two-man operation
17 working out of a pickup truck or to a more complex
18 company with highly sophisticated equipment used
19 to place and form concrete in ultra level slabs,
20 high-rises, bridges, parking decks, et cetera.

21 What I believe has been relevant to this
22 discussion is the fact that in 52 years, Southern

1 Concrete has worked closely with fly ash. There
2 has not been even one incident that I can recall
3 when an employee, an outside hauler, a customer,
4 or an end user has named us in a health claim
5 relative to fly ash.

6 If fly ash is labeled as a hazardous
7 material, then Southern Concrete material would
8 discontinue its use. The increased costs in
9 handling the material and the potential perceived
10 liability that we could be facing would render the
11 use of fly ash economically unfeasible.

12 The NRMCA has outlined benefits from
13 using fly ash. All of these would be reversed if
14 fly ash is removed from ready mix concrete. There
15 will be decreased durability and life of the
16 structures, which could lead to injuries, but most
17 certainly, would lead to increased costs. Also,
18 the cost of the initial project will be greater.
19 This will affect everyone in this room. Should
20 you, as an individual, want to build or buy a
21 home, the increased cost in the foundation, slab
22 and driveway construction would be factored in.

1 The same would hold true if you wanted to buy or
2 rent a commercial space from which to run your
3 business. We, as tax payers, would also pay more
4 for an airport parking deck, a classroom building
5 at UNCC, a new sports arena, a bridge over 485,
6 new schools, or even sidewalks.

7 Finally, and most importantly for our
8 children and our grandchildren, there would be
9 increase in waste in our landfills.

10 Fly ash is working in the ready mix
11 industry. Changing it would only create
12 insurmountable problems.

13 MR. DELLINGER: Thank you. I've only
14 kept track of the numbers over there, so whoever
15 has the lowest number, can you come forward and
16 help me put that number in? Thank you. Number
17 153.

18 MR. SILVERTOOTH: My name is Mike
19 Silvertooth, and I'm with Mineral Resource
20 Technologies, a CEMEX Company. MRT is a
21 full-service coal combustion product marketing and
22 management company in North America.

1 I want to thank the EPA panel for giving
2 me time to address the recent proposal for the
3 disposal of coal combustion residuals from
4 electric utilities.

5 Besides being a full-service marketing
6 and management company of coal combustion
7 products, one of MRT's key roles is to supply our
8 parent company, CEMEX, with fly ash, bottom ash
9 and synthetic gypsum for the production of ready
10 mix concrete, concrete pipe and cement in the
11 United States. Our company was recognized by the
12 EPA's coal combustion partnership program with the
13 enhanced utilization of coal combustion products
14 award in 2008. Specifically, EPA recognized us
15 for internally consuming 2.1 million tons of coal
16 combustion products annually in our various
17 products. We continue to be the single largest
18 beneficial user of coal combustion products in the
19 United States.

20 EPA named CEMEX USA the energy star
21 partner of the year for outstanding energy
22 management reductions in greenhouse gas emissions

1 for the second year in a row. Award winners are
2 selected from more than 12,000 organizations.

3 As you can see, our company is dedicated
4 to operating in a sustainable manner that
5 minimizes the impact to the environment. EPA has
6 listed seven priorities for EPA's future, and
7 taking action on climate change is listed first.
8 The reduction of greenhouse gases is a top
9 priority of EPA and is also a top priority for our
10 company as well. The utilization of coal
11 combustion products is a major portion of our
12 internal efforts to minimize greenhouse gases and
13 could very well be the single largest source of
14 reducing CO2 annually. With the utilization of
15 fly ash in our concrete operations alone, we have
16 been able to reduce CO2 by up to 1.6 million tons
17 annually, while at the same time improving the
18 quality and useful service life of our concrete.

19 Also, we continue to use the fly ash,
20 bottom ash and synthetic gypsum as a raw feed
21 replacement for mined virgin materials for the
22 production of Portland cement. By utilizing coal

1 combustion products in our cement operations,
2 CEMEX substitutes a proportion of the mined raw
3 materials such as clay, shale and natural gypsum.
4 This enables us to conserve natural resources,
5 avoid land disturbances and reduce CO2 from mining
6 operations. At the same time, this reduces the
7 amount of CCPs disposed at power plants and avoids
8 the CO2 generated from disposal activities.

9 In summary, CEMEX urges EPA to elect
10 management of coal combustion products under RCRA
11 Subtitle D. This option allows coal combustion
12 products to be managed under the same, similar
13 guidelines proposed under the RCRA Subtitle C
14 option, but allows CCPs to remain classified as
15 nonhazardous material. Should coal combustion
16 products remain classified as a nonhazardous
17 material fall underneath RCRA Subtitle C
18 management, there are too many negative variables
19 that will hamper the beneficial uses of coal
20 combustion products and would cripple a large part
21 of the reduction of greenhouse gases in our
22 country.

1 Thank you to the EPA panel for allowing
2 my company to address our concerns.

3 MR. BLACK: Hello, my name is Bill
4 Black. I'm a technical sales representative for
5 the SEA group here in North and South Carolina.
6 We're a company that markets, sells, and transport
7 coal fly ash in North and South Carolina,
8 Virginia, and Tennessee, primarily. The material
9 that we sell is used beneficially in ready-mix
10 concrete and other environmentally-friendly
11 building products.

12 My company and others like it in this
13 region keep millions of tons of fly ash out of
14 landfills and slurry ponds every year by recycling
15 it in concrete and other environmental-friendly
16 building products. The vast majority of my
17 company's customers that I have personally spoken
18 to regarding this EPA decision have told me that
19 if the EPA designates fly ash as a hazardous
20 material they would discontinue their use of it in
21 their concrete products. This will result in
22 millions of tons of fly ash going into landfills

1 in this region which are now being safely and
2 beneficially recycled in an environmentally
3 friendly way, and it is for this reason that I
4 came to oppose any EPA decision that would
5 categorize fly ash as a hazardous material whether
6 that would be under Subtitle C or otherwise.

7 Thank you very much.

8 MR. DELLINGER: Numbers 33, 34, 35 and
9 36. Number 33?

10 MR. MCCABE: Good afternoon. My name is
11 Pat McCabe. I'm an environmental manager with
12 Duke Energy and I'm testifying today on behalf of
13 the Utility Solid Waste Activities Group, or
14 USWAG. USWAG has been working cooperatively with
15 EPA for close to three decades regarding the
16 Agency's implementation of the Bevill Amendment
17 for coal combustion residuals. USWAG's members
18 will be directly impacted by the final CCR rule
19 and I very much appreciate the opportunity to
20 speak today on the proposal.

21 USWAG supports the Subtitle D Prime
22 option, with appropriate adjustments, because of

1 the options presented by EPA this is the one that
2 best balances clean energy with affordability and
3 reliability. USWAG shares EPA's objective of
4 having a federal regulatory program that ensures
5 the safe disposal of CCRs. The D Prime option
6 will meet this objective.

7 Opponents of a Subtitle D option persist
8 on incorrectly stating that this would merely
9 preserve the status quo under which EPA could only
10 issue guidance. This is not the case. Under a
11 Subtitle D option, EPA would issue federal
12 regulations specifically designed for CCR disposal
13 units. These regulations would be directly
14 enforceable by the states and the public under
15 RCRA's citizen suit provision. EPA would also
16 retain its imminent and substantial endangerment
17 authority to take action against any CCR unit that
18 posed a risk to human health or the environment.

19 We agree that disposal units that are
20 not fully protective must either be upgraded or
21 closed. However, there are many CCR surface
22 impoundments which are perfectly safe. The D

1 Prime option will allow for development of a
2 regulatory program that meets all objectives.

3 A major shortcoming, however, of either
4 the proposed Subtitle D approach is the lack of a
5 mechanism for the states to step in and administer
6 the regulations. Clearly, there are state
7 regulatory programs that already meet or exceed
8 the proposed Subtitle D standards. States with
9 qualified programs should be given the option of
10 administering the federal Subtitle D rules if they
11 so desire.

12 Finally, I want to touch on our
13 opposition to the Subtitle C option. USWAG agrees
14 with the views of virtually all the states, many
15 federal agencies, municipal and local governments,
16 state public utility commissions, and many other
17 third parties that regulating CCRs under RCRA's
18 hazardous waste program does not provide
19 significant additional protection to human health
20 or the environment relative to a Subtitle D
21 non-hazardous program. In fact, it would be
22 counterproductive to do so because Subtitle C

1 regulations would cripple the CCR beneficial use
2 industry. There is no reason for EPA to pursue
3 this approach when an appropriately designed
4 Subtitle D Prime option offers the same degree of
5 environmental protection without the attendant
6 risks, burdens and costs of Subtitle C.

7 Thank you.

8 MR. DELLINGER: Number 34?

9 MR. MARSHALL: Good afternoon. I'm
10 David Marshall with Headwaters Resources. I'm
11 here to speak to this issue from my background as
12 a former ready-mix producer. In 1972, my family
13 started a ready-mix concrete business in Leesburg,
14 Florida. I was a senior in high school and worked
15 full and part time there until I completed college
16 and began working full time in the operation.

17 In 1974 we began using fly ash based on
18 previous positive experience with the product use
19 in pipe and block. By the end of 1977 we were
20 using fly ash in all our concrete production.

21 As I learned about the technical aspects
22 of concrete and of the use of fly ash, I became

1 aware of the benefits to the end user in the area
2 of durability and enhanced strength performance
3 provided when a pozzolan is used in concrete. I
4 also became aware of the federal buying
5 recommendations and provisions to allow the use of
6 fly ash in concrete when comparable mix design
7 performance could be provided. By then, the
8 Florida Department of Transportation was allowing
9 fly ash in all concrete and was beginning to
10 consider requiring fly ash in concrete in certain
11 exposure conditions such as sea water.

12 For over twelve years I served as the
13 chair of the technical committee for Florida
14 Concrete and Products Association, a state trade
15 association and for ten years I was a board member
16 of the Construction Materials Engineering Council,
17 a group dedicated to quality concrete production
18 and product testing. I became well recognized for
19 my knowledge of concrete technology, testing,
20 materials evaluation and performance guidance.
21 And the more I learned, the more valuable fly ash
22 came to be seen as a benefit for all parties.

1 All along the way in the evaluation of
2 fly ash use and its incorporation into our daily
3 concrete production, we were very aware of the EPA
4 and Federal government recommendations to allow
5 the use of fly ash in concrete to the point where
6 the Federal purchasing guidelines provided buying
7 preferences for products using recovered materials
8 to the greatest extent possible. The EPA was also
9 very supportive of increased utilization and
10 encouraged, supported and participated in ongoing
11 research at many levels that encouraged and
12 supported fly ash use. The 1980 Beville
13 Amendment, 1983 procurement guidelines, 1988
14 revisions increasing the emphasis to use recovered
15 materials to the greatest extent possible; all
16 items indicating that fly ash was to the benefit
17 of the producer, the consumer and the buying
18 public.

19 Power plants throughout the state and
20 country were being asked to step up their ability
21 to supply this increasingly valuable commodity and
22 the establishment of sourcing terminals and

1 distribution networks with appropriate backhauls
2 was encouraged by the concrete industry. The FDOT
3 has changed their predicted structural life from
4 30 years to 70 years when fly ash is incorporated
5 in their mix designs, so they required its use in
6 extremely aggressive environments. Not only were
7 we encouraged to use fly ash to improve concrete
8 performance, but we were encouraged to use fly ash
9 to extend the supply of Portland cement, the most
10 expensive item included in the production of
11 ready-mix concrete and a material that is
12 occasionally in short supply. And we were
13 encouraged to use this recovered material to
14 minimize landfill use in power plants. We were
15 recycling long before it became popular at
16 curbside.

17 Thank you.

18 MR. DELLINGER: Thank you. Number 35,
19 and while number 35 is moving forward, can number
20 36 move forward to the front? Thank you.

21 MR. SMITH: Thank you very much. I want
22 to first thank the EPA for holding these hearings.

1 My name is James Smith. I'm here in two
2 capacities. One is representing Mr. Heath Hill,
3 who is a neighboring landowner of SCE&G's Wateree
4 Station in South Carolina. I also serve in the
5 South Carolina state legislature. And I'm here to
6 support Subtitle C regulation, that coal
7 combustion waste for basically, four reasons.

8 Basically, in South Carolina we have
9 essentially no protection. I want to tell Mr.
10 Heath Hill's story. At this plant, the Wateree
11 station, was began operating in the early 1970s.
12 Since then, it has two coal ponds that are online,
13 and they are right along the Wateree River.

14 This action, we brought an action to
15 challenge the permit for the waste discharge into
16 the Wateree river and I'm going to provide the
17 panel here with some photographs. It's a lot of
18 information but the photographs themselves, if you
19 could share those, they show what are seeps in the
20 walls of these ponds. These ponds discharge water
21 from those ponds containing one seep, over 1900
22 parts per billion of arsenic; the other seep over

1 700 parts per billion. Their daily maximum limit
2 under the previous permit was 40 parts per
3 billion.

4 When this facility was reviewed by the
5 industry's own organization, EPRI, they
6 recommended that these walls be improved to
7 prevent seepage. Both our state regulatory
8 agency, as well as the companies themselves have
9 not taken any action to improve and close out the
10 seeps. Consequently, we are seeing elevated
11 readings within fish in terms of arsenic presence
12 in the fish there, and we have nowhere to turn at
13 this point.

14 As a matter of fact the previous
15 standard set amount of that 40 parts per billion
16 limit on arsenic, our own regulatory agency had
17 the wisdom to remove that entirely, so now there's
18 no monitoring limit for arsenic at that site
19 despite what we have in terms of projected
20 knowledge of elevated levels of arsenic poisoning
21 the river, poisoning the groundwater and poisoning
22 associated wells in the area.

1 I would point, you know, the evidence
2 and information provided by EPA first, that it is
3 your estimate that residents who live near unlined
4 coal ash ponds and rely on well water have as much
5 as one in 50 chance of getting cancer, a cancer
6 rate that is almost 2000 times your agency
7 regulatory goals.

8 We need your help in South Carolina to
9 protect public health. We need to make sure that
10 there is a limit, that they're not taking -- the
11 reason they removed the limit as they said "EPA
12 said we could." And that needs to change to
13 protect the health of the neighbors of Mr.
14 Heathfield as well as the rest of the citizens in
15 the state of South Carolina.

16 Thank you very much.

17 MR. DELLINGER: Thank you. Number 36?

18 MR. AHLBERG: Good afternoon. My name
19 is Gary Ahlberg. I'm a senior designer with
20 BlackRock Engineers, and I'm also a former
21 Subtitle D regulator in the state of North
22 Carolina. I'm here to offer my professional

1 comments on the regulation of coal ash and coal
2 combustion residuals. It's a field that I've been
3 actively involved in for 15 years, and landfill
4 regulation for nearly 25 years.

5 I have two primary comments to
6 supplement my written comments, and the first is
7 the status of regulation that applies to coal ash
8 landfills in particular. Here in North Carolina,
9 the state of North Carolina actively and fully
10 regulates coal ash landfills, and requires liner
11 systems and leachate collection systems for their
12 construction. We've been involved in projects
13 here in North Carolina that have adequately
14 utilized existing capacity on what I would
15 consider brown fields, improved their groundwater
16 quality, added engineering controls to those
17 facilities that have benefitted the environment,
18 provided for safe disposal, and have provided a
19 minimum impact on green field sites.

20 I think if you take away the existing
21 brown fields and preclude them from future use,
22 eliminate their capacity, you're requiring a

1 needless use of soil resources and green field
2 resources for these facilities. I think that, you
3 know, coal ash, if designed properly, can also
4 provide more or less an improvement to those site
5 conditions while it utilizes the existing capacity
6 of those facilities.

7 I'm not really here to speak on the pond
8 issues. I think that's a complicated issue for
9 the regulations where NPDES regulations manage the
10 wet waste and solid waste regulations here in
11 North Carolina govern the solid requirements or
12 the dry requirements for those facilities. So it
13 certainly is a challenge. I think the regulators
14 within the solid waste group within Subtitle D
15 program have the experience, the staff experience,
16 and technical resources to evaluate engineers'
17 designs for solutions for these facilities. So I
18 don't think we should establish design standards
19 that do not include alternatives and equivalent
20 demonstrations.

21 Thank you.

22 MR. DELLINGER: Thank you. Can we have

1 numbers 37, 38, 305 and 306 move forward? Number
2 37?

3 MR. ELDRED: Good afternoon. My name is
4 Carl Eldred and I represent the Florida Electric
5 Power Coordinating Group. The FCG is a nonprofit
6 association consisting of 28 investor-owned,
7 municipally-owned, and cooperatively-owned
8 electric utilities engaged in providing the
9 majority of electric power to the public in the
10 state of Florida.

11 The FCG understands that recent events
12 have caused the EPA to revisit its previous
13 regulatory determinations for CCRs. However, the
14 proposed Subtitle C regulations are not an
15 appropriate response. In Florida, hazardous waste
16 landfills are prohibited. Additionally,
17 industrial byproducts such as CCRs may not be
18 beneficially used if they are regulated as a
19 hazardous waste. Consequently, if regulated under
20 Subtitle C, CCRs generated in Florida will have to
21 be disposed of or beneficially used out of state.

22 It's conservatively estimated that over

1 1.1 million tons of CCRs are disposed of each year
2 in Florida. Absent legislative amendment,
3 Subtitle C regulation would require FCG members to
4 dispose of these CCRs at a hazardous waste
5 landfill in Emelle, Alabama which is located over
6 600 miles away from many of the FCG member
7 facilities.

8 The cost of disposal alone would exceed
9 \$280 million. Not to mention the cost of sending
10 over 160 trucks a day on a 1200 mile round trip to
11 Alabama.

12 The amount of CCRs disposed of in
13 Alabama annually may actually exceed 3.6 million
14 tons if FCG members are unable to find
15 out-of-state opportunities for the continued
16 beneficial use of the estimated 2.5 million tons
17 of CCRs that are currently beneficially used in
18 Florida.

19 A combination of Subtitle C regulations
20 and the state prohibitions on disposal and
21 beneficial use of hazardous waste will cripple the
22 generation of electric power in Florida, and will

1 greatly increase the cost of power production for
2 FCG customers.

3 Simply calling the CCRs a special waste
4 will not place them beyond the reach of Florida's
5 statutory prohibitions. Even EPA recognizing the
6 preamble that Florida's statutory prohibitions
7 would have to be amended if CCRs are regulated
8 under Subtitle C. However, it is uncertain
9 whether there will be any legislative support for
10 such amendments.

11 What is a certain is that any proposed
12 legislative amendment would meet strong opposition
13 from any number of environmental public interest
14 groups that are very active in Florida.

15 Of the options presented in the proposed
16 rule the FCG prefers the Subtitle D Prime option.
17 In light of the unique factual and regulatory
18 circumstances present in each state however, EPA
19 should first obtain legislative authority to
20 implement state approval processes, or at least at
21 a minimum include in the Subtitle D options the
22 ability for states to seek equivalency

1 determinations. For many years Florida
2 successfully implemented an approved Subtitle D
3 program that differs from some of the requirements
4 of part 258. The same legitimate reasons for
5 Florida's approved alternatives, the parts 258
6 requirements will also apply to the proposed
7 Subtitle D regulations for CCRs. However, as
8 written, there is no process by which Florida can
9 seek those alternatives.

10 Thank you.

11 MR. DELLINGER: Number 38.

12 MS. BLOTNICK: Good afternoon. I want
13 to thank the EPA for coming to Charlotte for this
14 hearing. My name is June Blotnick. I'm the
15 director of Clean Air Carolina, a local nonprofit
16 here in Charlotte.

17 Many people have spoken about the risks
18 of toxic coal ash waste and what it presents to
19 our water resources and particularly to
20 Charlotte's source of drinking water, Mountain
21 Island Lake. Today, on the 40th anniversary of
22 the Clean Air Act, I'll emphasize the importance

1 of protecting air quality as we move from storing
2 hazardous coal ash waste in slurry ponds to
3 landfills, and the need for strong Federal
4 regulations.

5 A report published 10 years ago in 2000
6 asking for stronger Federal regulation on coal ash
7 waste by several environmental groups, points
8 clearly to the closed system of nature and how
9 removing pollution from the air doesn't mean it
10 leaves the environment. Referring to coal ash
11 waste, it says, "If the EPA does not regulate this
12 waste stream it will lose ground it has gained in
13 cleaning up our air. And future improvements in
14 electric plant air emissions could be eroded.
15 Make no mistake about it, cleaning up the air does
16 not mean that pollutants disappear. It means they
17 are captured in lime, in fabric filters, in
18 particulate matter collectors. Once captured,
19 they stop being air emissions and start being part
20 of the unregulated, solid waste stream. Cleaning
21 up the environment by regulating air emissions but
22 not other waste streams is a lot like trying to

1 fill up a balloon that has a hole in it. The job
2 just cannot get done."

3 With newer coal plants like Duke
4 Energy's Cliffside, which is an 800 megawatt high
5 efficiency unit located 50 miles west of
6 Charlotte, massive amounts of coal will be burned.
7 With EPA's new air regulations and new pollution
8 controls capturing more of the toxic air emissions
9 from the smokestacks, the total amount of coal ash
10 waste will surge. Duke has secured a permit to
11 store the coal ash waste in a huge landfill which
12 will initially hold 1.8 million cubic yards of
13 waste for a five-year period. Duke will cover the
14 waste with six inches of dirt-but only once a week
15 -- and this is six inches of our North Carolina
16 red dirt.

17 In this scenario toxic fugitive dust can
18 enter our airshed during transport, during dumping
19 of the waste and through wind and water erosion on
20 the 1,560 days the waste is not covered by dirt
21 during that 5-year period. We know that climate
22 change will bring more drought as well as more

1 extreme weather, both of which can accelerate the
2 erosion of the six inches of dirt, leaving the
3 toxic coal ash waste exposed to the elements.

4 Our region already has our hands full
5 with air pollution problems as we are the 10th
6 smoggiest city in the country. Our state doesn't
7 even have an EPA-approved state implementation
8 plan for ozone non-attainment issues, and the
9 56,000 children with asthma in our region don't
10 need another reason to stay indoors.

11 We have a major environmental time bomb
12 on our hands. We don't need a patchwork of state
13 regulations. We need strong, consistent Federal
14 oversight to protect public health and the
15 environment. We need Subtitle C.

16 Thank you.

17 MR. DELLINGER: Number 305?

18 MR. STRATTON: Good morning. My name is
19 Bob Stratton. I live in Matthews, North Carolina
20 and I'm representing nobody. I wouldn't have your
21 job because you're not going to make anybody happy
22 here today.

1 I'm here to support Subtitle C. And I'm
2 tired of listening to industry throw up the fear
3 factor. It's all I've heard from industry. I
4 haven't heard one person from industry say let's
5 sit down and work this out together. It's all
6 "I'm going to close my plant." Well, I'll tell
7 you what, people. If we don't clean up the
8 environment today we're going to close down all
9 our plants along with the environment. The state
10 of North Carolina is not going to fix it. If you
11 look back at the history of this state and look at
12 the regulations that they totally ignore, you will
13 know that it's not going to happen. Thanks.

14 MR. DELLINGER: Number 306? Numbers 40,
15 41, 42 and 44. Number 41?

16 MR. RHODES: I'm number 40.

17 MR. DELLINGER: 40, okay. Oh, I'm
18 sorry. I just -- I looked at my paper wrong.
19 Thank you.

20 MR. RHODES: Good afternoon. Thank you
21 for the time you've allotted us to offer our
22 position on the proposed Subtitle Change. For the

1 record, my name is Doug Rhodes, I have worked for
2 the research and development portion of Headwaters
3 Resources for the last 16 years.

4 I wanted to use the time allotted to me
5 to discuss the inevitable stigma which is going to
6 be placed on beneficial use of fly ash if Subtitle
7 C is adopted. Several times prior fly ash has
8 been reviewed for Subtitle C designation and found
9 nonhazardous. With the recent move by EPA to
10 change to Subtitle C, numerous technical bodies
11 such as American Association of State Highway
12 Transportation Officials, National Ready-Mix
13 Association, American Society for Testing and
14 Materials, American Concrete Institute, and the
15 Portland Cement Association have confirmed the
16 hazardous designation is neither warranted nor
17 needed.

18 EPA and the states have consistently
19 recognized that regulating CCRs as hazardous waste
20 under Subtitle C would adversely impact their
21 beneficial use. Such a result would not be
22 consistent with RCRA's directive that EPA consider

1 such beneficial uses in evaluating CCR regulatory
2 options. On the other hand, regulation of CCRs
3 under RCRA Subtitle D would not adversely impact
4 CCR beneficial use, while at the same time
5 allowing for the development of Federal
6 regulations that would ensure that CCRs are
7 managed in a manner protective of human health and
8 the environment.

9 The belief that fly ash can have a dual
10 designation of hazardous and beneficial use is
11 absolutely untrue. Years of work have gone into
12 establishing the technical data, relationships,
13 distribution and product development that
14 validates beneficial use. The stigma of a
15 hazardous designation could simply destroy the
16 marketability of beneficial use. I would take
17 this opportunity to remind you of the negative
18 impacts on marketing, technical, financial and
19 legal implications for the beneficial use of fly
20 ash.

21 So in closing I urge you to maintain the
22 past technical findings that CCR regulation under

1 Subtitle C is unnecessary and unwarranted. Thank
2 you again for your time and attention.

3 MR. DELLINGER: Number 42. 41? Okay, I
4 did it wrong again.

5 MR. FANSLER: No worries. Good morning.
6 Henry Fansler. I live in Louisville, North
7 Carolina. I'm a member of the steering committee
8 of North Carolina Interfaith Power and Light and a
9 conservation co-chair of the foothills group of
10 the Sierra Club serving Forsyth, Surry, Stokes,
11 Yadkin, Davie and Davidson counties.

12 Sorry to say that the well that supplied
13 water to my childhood home was partially filled
14 with coal ash from the power plant of a local
15 textile mill when we could connect to city water.
16 If my father had known that it was much more than
17 coal ashes it would never have happened. Then, he
18 did not know that the ash contained toxic metals
19 including mercury, selenium, cadmium and arsenic.
20 Now we know better, and now we need to do better.
21 To do this, participation will be required from
22 Federal, state, and local government, and citizen

1 involvement.

2 I'm here today to represent the faith
3 communities of the foothills of North Carolina, my
4 Sierra Club members, my family, and especially my
5 10 grandchildren who call this area home. I
6 support Option C of the proposed rule, and I hope
7 that you will make stringent, clear rules
8 concerning beneficial uses of coal ash. I believe
9 that we will need to establish concise
10 requirements so that the storage, disposal, and
11 use of coal ash can be verified by inspection from
12 appropriate authorities. I believe that we should
13 work to prevent contamination before there is a
14 need to clean up contamination.

15 I love to fish, and live near the Belews
16 Creek Power Station in Stokes County. I know of
17 folks that live right near the station and more
18 that fish for recreation and most want to eat what
19 they catch. Belews Creek Steam Station's active
20 ash pond surface impoundment is on the EPA's
21 official June 2009 list of coal combustion residue
22 surface impoundments with high hazard potential

1 ratings.

2 In the 70s, after the station began
3 operation, there was a selenium surprise in the
4 waters of Belews Lake. The fish stopped
5 reproducing and the fishery collapsed. Since then
6 these issues, nitrogen oxides, fly ash, and sulfur
7 dioxide emissions have been successfully addressed
8 by the folks at Belews. I see no reason that the
9 security of the ash pond could not be addressed as
10 well. Forsyth County has a Department of
11 Environmental Affairs, but is subject to budget
12 restrictions. The website of the North Carolina
13 Department of Environment and Natural Resources
14 tell us that they are committed to regulating the
15 impoundment and disposal of coal ash, but I know
16 they are committed to doing the right thing but I
17 believe that a definitive regulation such as
18 Option C presents, with a definitive consideration
19 of beneficial use of coal ash, is the appropriate
20 response to the issue for me, as a heartfelt
21 response to our gift of creation.

22 Thank you and welcome to North Carolina

1 in September. I hope you get a chance to enjoy
2 it.

3 MR. DELLINGER: Thank you. Number 42?

4 MR. GRUBER: I'm Doug Gruber. I work
5 for a coal ash marketing company, but I'm here to
6 talk more about stigma than the impoundments and
7 those things that you talk about, and how it
8 affects me personally.

9 Stigma is an interesting thing and they
10 say it will have no effect on the beneficial reuse
11 of fly ash and coal combustion products but it
12 will have. I've seen this recently in my personal
13 life. I live along the Gulf Coast of Florida and
14 after the Deep Horizon incident, the news media
15 and politicians in their well-meaning manner
16 talked so much about the devastation along the
17 coast, and it was an incredible environmental
18 disaster and the long-term effects are still yet
19 to be seen.

20 The damage done to our local economy was
21 mostly because people perceived how badly things
22 were on the coast. And I live in the area of Fort

1 Walton Beach and Destin. Well, let me tell you,
2 our beaches are beautiful. They're still
3 beautiful. Please come and visit because my
4 neighbors are unemployed. Businesses are going
5 out of business, and it's just really bad.

6 The same thing is about to happen to my
7 job. I market coal ash products to people who use
8 them responsibly. We use them in good ways that
9 benefit society, because we don't landfill the
10 material. I implore you not to use C, and label
11 us hazardous as you destroy our ability to market
12 this material in a useful manner. Please do not
13 call this a hazardous material. It doesn't meet
14 the guidelines for hazardous, and all you're
15 destroying is the good work people have done to
16 recycle. Recycling is important in my life, is
17 important in my job, and this information and
18 stigma is going to destroy that opportunity.
19 Please do not label this product hazardous. It is
20 not hazardous. It is a good, useful opportunity
21 for us to recycle.

22 Thank you.

1 MR. DELLINGER: Thank you.

2 MR. WILLIAMSON: My name is Rob
3 Williamson. I am vice president of marketing and
4 business development for Trimac Dry Bulk Group.
5 We're headquartered in Holly Hills, South
6 Carolina. Trimac is a major bulk hauler of fly
7 ash, hauling fly ash throughout the United States
8 through eight different states: Alabama, Florida,
9 Georgia, Michigan, North Carolina, Ohio,
10 Louisiana, and South Carolina.

11 Reclassifying fly ash as a Hazardous
12 waste would be very negative to our business. And
13 listening to all the speakers before me, they're
14 talking about landfill, they're talking about
15 ponds and what have you, and reclassifying as
16 hazardous, but eliminate the fly ash that we
17 currently haul to concrete products and what have
18 you, so it would be a loss of over at least 35
19 jobs at our company.

20 We are a strong proponent of recycling
21 fly ash. Fly ash is used in many different things
22 as we haul it to concrete products, and to --

1 we're hauling a very large project at the Savanna
2 River bomb plant, which is -- the government is
3 spending \$1.6 billion to clean it up. Fly ash is
4 being used to clean it up. So if fly ash is so
5 bad, why would it be used in that, in this
6 project?

7 We also haul to interstate highway
8 paving jobs. It's used in the concrete of the
9 recycling there. So we are a proponent of
10 recycling. Changing it to hazardous would change
11 our insurance. It would change our classification
12 as a carrier. It would require truck drivers to
13 change their commercial drivers license to
14 hazardous amendment. It would also make many
15 smaller carriers unable to get insurance at all,
16 if you were to reclassify it. So it's much
17 smarter to recycle ash into concrete highways and
18 other projects than to put it in landfills and
19 ponds.

20 So I ask you very sincerely, do not
21 reclassify it as a hazardous waste. Thank you.

22 MR. DELLINGER: Thank you. Number 44.

1 REV. HUNT: Good morning. I'm Rev.
2 Douglas Hunt, executive director of Tennessee
3 Interfaith Power and Light. I'm pleased to be
4 here, to call for implementing Option C as a first
5 and critical step in meeting our moral and ethical
6 responsibilities to protect people and our planet.

7 Tennessee did not wait for EPA to give
8 us a hearing. We went ahead and held a people's
9 hearing on September 22, the transcript of which
10 has been forwarded, and you will see evidence of
11 the effect of the Kingston ash spill on those
12 people's lives. It brought misery and injustice
13 to the people of Will County and surrounding
14 communities and now the people of Perry County,
15 Alabama, where 30 percent of residents live below
16 the poverty line, and a majority of that
17 African-American, are receiving the remnants of
18 the toxic coal ash spreading misery and injustice
19 and the morality that surround the disaster even
20 further.

21 Tennessee Interfaith Power and Light and
22 the rest of our Interfaith Power and Lights are

1 very concerned about issues of environmental,
2 energy, and climate justice. Can it possibly be
3 moral to continue to allow the transportation,
4 disposal and storage of material that contains
5 mercury, arsenic and a whole laundry list of toxic
6 substances without the kind of monitoring and
7 control provided in Option C? Can it possibly be
8 moral or just to make the decision not to declare
9 and regulate coal ash as the kind of substance it
10 truly is? To fail to adopt Option C will almost
11 certainly make such future tragedies inevitable.

12 A word about stigma. Those of us here
13 from Muslim, Jewish and Christian backgrounds know
14 about stigma from our scriptural teachings.
15 Stigma was not attached to Cain because he
16 deprived people of an economic opportunity, or
17 lost jobs. And jobs are critically important in
18 these times. But like Cain, if coal ash is to
19 bear a stigma, it will be a stigma from lives
20 lost, lives ruined, and the planet poisoned.

21 The solution to all of these problems
22 ultimately is to stop burning coal. But that's

1 not going to happen -- that's not going to happen
2 immediately. But Option C is a first and critical
3 step in meeting our moral and ethical obligations
4 to protect people and our planet from any more
5 coal calamities like we experienced in Kingston.

6 Thank you.

7 MR. DELLINGER: Thank you. Is there
8 anybody in the room with a number lower than 44
9 that has not spoken?

10 (No audible response.)

11 MR. DELLINGER: Okay, so I'm going to
12 call number 303, 307, 308 and 191. Can you shout
13 out your numbers, so I can -- 303?

14 MR. SCOGGAN: I want to thank you for
15 the opportunity to be here and speak before you
16 today. My name is John Scoggan. Today I'm
17 speaking as a concerned father of three children
18 attempting to enter the job market.

19 I want you to know that I support the
20 EPA's efforts to protect human health and
21 environment. We don't want another disaster like
22 the Kingston spill. However, following Kingston I

1 think the EPA visited most of the coal waste
2 impoundments around the country and I'm not aware
3 of any recorded potential problems that could lead
4 to another Kingston.

5 I am opposed to coal ash being regulated
6 under RCRA's Subtitle C labeling the materials
7 hazardous. There are currently not enough
8 hazardous landfills in the U.S. to handle all this
9 material. New landfills will have to be
10 permitted, and many at greater distances from the
11 power plants in the current disposal sites. These
12 new landfills will cost money. Hauling the extra
13 distance to these landfills will increase cost.
14 The amount of waste will increase. Utilities may
15 reduce the amount of coal combustion material
16 available for reuse, and the amount recycled may
17 be reduced by the end users due to the avoidance
18 of legal liabilities. Again, costs will rise.

19 The additional landfill waste material
20 will not help the environment. Handling and
21 hauling hazardous waste will increase cost.
22 Utility plant on-site operations to deal with

1 hazardous material will increase cost.

2 All of this additional cost will
3 eventually be passed on to consumers, both
4 commercial and residential. We all know that we
5 are in the worst recession since the depression.
6 Unemployment is close to 10 percent. Many
7 manufacturing companies are just barely getting
8 by. An increase in energy costs will drive some
9 companies out of business or cause American
10 business to ship production offshore where it
11 costs less to operate. This will result in more
12 Americans losing their jobs and further damaging
13 the US economy.

14 EPA's own scientific data says that coal
15 waste is not hazardous. By EPA's own admission
16 both RCRA Subtitle C and D will provide equal
17 protection for the public health and environment.
18 I ask that the EPA rule with RCRA Subtitle D and
19 continue to label coal ash as a non-hazardous
20 material. Don't slow down the American recovery
21 by needlessly increasing energy costs and putting
22 U.S. citizens out of work.

1 Thank you for your time.

2 MR. DELLINGER: Thank you.

3 MR. BRINKLEY: Hello, my name is Dave
4 Brinkley and I'm the director of distribution and
5 customer resources for Roanoke Cement. I'd like
6 to read a couple things for you this morning.
7 Environmentally sound uses of ash conserve
8 resources, reduce greenhouse gas emissions, lessen
9 the need for waste disposal units, and provide
10 significant domestic benefit. There's a lot of
11 beneficial use that can be had from fly ash.
12 Subtitle C would mitigate all of those beneficial
13 uses that we have available to us. I'm not sure
14 if there's too many people in this room that would
15 think that calling fly ash a hazardous material
16 and sending it to the landfill and then calling
17 fly ash beneficial use and using it in concrete in
18 our schools or in other public places makes sense.

19 Reclassifying fly ash as a hazardous
20 waste would definitely have a detrimental effect
21 on the amount of fly ash that's used in concrete.
22 As a cement producer, you would think that I would

1 advocate less fly ash in concrete mix because then
2 I would have the opportunity to produce more
3 cement and sell more cement. Nonetheless, the
4 environmentally responsible thing to do is
5 Subtitle D and not to give fly ash a negative
6 impact.

7 Thank you.

8 MR. DELLINGER: Thank you. 191?

9 MR. BRYANT: My name is Mark Bryant.
10 I'm here today on my own behalf. For the past 18
11 years I've held various responsible positions for
12 coal-fired utility for all aspects of hazardous
13 and solid waste management including the disposal
14 of coal combustion residuals. And more recently
15 the beneficial use and recycling effort of all
16 categories of CCRS, including FGB gypsum(sic).

17 Eighteen years ago I joined a utility
18 and my first task was the closure of a
19 company-owned landfill along with the permitting
20 and construction of a modern state-of-the-art
21 landfill. This work was part of the municipal
22 solid waste landfill regulations that were

1 promulgated in the 80s and enacted in the 90s.

2 To me this RCRA Subtitle D program seems
3 to be the perfect model to achieve the change that
4 is sought today. The similarities are too close
5 to ignore. Subtitle C is a political solution,
6 not a technical solution. Back then there were
7 landfills that did not meet a technical standard
8 for structural stability or for engineering
9 control. A national standard was required.
10 Today, we have witnessed the structural failure of
11 an impoundment that has galvanized a call for
12 action and national standard for managing CCRs.
13 The model is in place: A solid waste program that
14 phases in reasonably, that evaluates the
15 performance of existing facilities, closing those
16 that fail the test, and allowing adequate time to
17 permit and construct new, modern facilities where
18 needed.

19 This policy and regulatory scheme
20 provided for a manageable, cost-effective
21 transition that brought the management of
22 household trash and solid waste to a modern

1 science-based standard. The technical standards
2 for Subtitle C and a Subtitle D landfill are
3 essentially the same. So why are we threatening
4 all the fine work to promote beneficial use and
5 recycling, most of which was supported by EPA?

6 Today, our municipal solid waste
7 program, under a national consistent level of
8 requirements implemented by the states, is a
9 success. I believe that the President promised
10 that all policies enacted during his
11 administration would be based on science. To
12 politicize a well-tested RCRA is poor public
13 policy, will waste decades of good hard work and
14 cause a \$10 billion beneficial use and recycling
15 industry to suffer, if not die.

16 These uses are well-conceived,
17 well-designed and well-constructed and are based
18 on good science, sound economics and a market
19 need. A Subtitle C approach is unnecessary.
20 Subtitle D is sufficient. Thank you for
21 listening.

22 MR. DELLINGER: Thank you. Numbers 208,

1 209, 308 and 310? 208 and 209 are not in the
2 room? Okay, so let's go 308 and 310, 313, 314.

3 MR. TODD: Good afternoon. My name is
4 Sean Todd and I'm here on behalf of the Coal
5 Boiler Slag Consortium. And we are here to
6 advocate a principle that previous speaker just
7 referred to as well as I think many Sierra Club
8 members could also agree to and Interfaith Power
9 and Light members can also agree to, and that's to
10 let science drive the policy. If a byproduct of
11 material meets the technical criteria of hazardous
12 waste then classify it and regulate it as such.
13 If that byproduct or material does not meet that
14 technical definition, then don't classify or
15 regulate it as a hazardous waste.

16 I represent the boiler slag consortium.
17 If you have shingles on your roof, on your home,
18 there's an 80 percent chance that you have boiler
19 slag on your house. 80 percent of all shingles in
20 this country contain boiler slag. Boiler slag is
21 different chemically and physically than other
22 types of coal combustion byproducts; different

1 than fly ash, bottom ash, and flue gases -- it's a
2 sulpherization by-product. It is collected at
3 the bottom of a furnace. It's quashed with water
4 and thereby vitrified -- meaning glassified.

5 Boiler slag is inert. It's
6 environmentally benign and has at most a technical
7 hardness of 6-plus. It has extremely low
8 leachability rates. It is environmentally benign.

9 EPA asks specifically for some state-run
10 programs. We will submit for the public record
11 the state of New Hampshire in August 2005; their
12 Department of Environment Services conducted a
13 technical review of boiler slag and approved its
14 use as a base material for the construction of
15 driveways, roads, parking lots, asphalt emulsions
16 and structural film. We'll give that to you and
17 to the public docket. Their laboratory report
18 finds the smallest particle size of boiler slag
19 found. They did a chemical analysis for arsenic,
20 cadmium, lead, and mercury, and four other
21 constituents. They found concentrations to be
22 between less than 0.01 and 0.5 milligrams per

1 liter concentration. Not meeting the definitions
2 of hazardous waste.

3 My last point is another specific
4 resuscitation from the rulemaking, and that has to
5 do with unencapsulating uses. Over 90 percent of
6 boiler slag is reused in roadways and roofing
7 shingles and in abrasive applications. We have
8 another study which we will submit to the docket,
9 that from those fines used in abrasive
10 applications; blasting industrial facilities,
11 ships, roadways, bridges, the technical product
12 was found to be the same as the soil in your
13 backyard. And so when that material is blasted
14 into its use, it simply breaks down in size. It
15 does not chemically alter boiler slag.

16 So in conclusion, we would like to let
17 science drive the policy, continue the
18 unrestricted use of boiler slag, and please don't
19 lump boiler slag in with other coal combustion
20 byproducts.

21 MR. DELLINGER: Thank you. 310.

22 MR. BUCKLEY: My name is Tony Buckley.

1 I moved here from Arizona about five years ago.
2 And I bought a lot on Lake Wylie because I liked
3 the water so much, and you know there's not too
4 much in Arizona. So that was a big novelty to me
5 and I spent most of my time in the lake. I'm
6 retired. I don't actually work. And after about
7 two years I started to get a neurological problem
8 and after going to see many specialists, I had
9 contracted arsenic poisoning to a level where I
10 couldn't -- my wife had to help me get out of bed
11 and I couldn't get out of a seat after sitting in
12 the theater for a while. It just put me in a
13 total sort of stiff position, and they discovered
14 I have shading in the brain.

15 And we had Lake Wylie tested at the time
16 and my well tested. Lake Wylie showed up to be an
17 insignificant amount in the lake, but I had to
18 have no little concern about it.

19 You know, my piece is that we are
20 subject to organic poisoning in many areas. One
21 area that we can control is the lake, and we need
22 to do that because I can tell you, I thought I had

1 MS and I was going to be crippled for the rest of
2 my life, and now I'm taking a treatment put out by
3 Dr. Brooks who did a study in Bangladesh, and the
4 treatment they give you is basically a type of B12
5 which attracts the arsenic to it and it's supposed
6 to exit my body. And it's only an experimental
7 phase but it seems to be working and I walked here
8 today, so I am proof of that fact. But I can tell
9 you, I still have arsenic poisoning. I'm still
10 feeling the effects of it today, and I will for
11 the rest of my life I'm told. So that's right
12 from somebody who has been personally affected by
13 it. Okay?

14 MR. DELLINGER: Thank you. Numbers 103,
15 92, 164, and 313. Since only two people came up,
16 and I think I called four numbers, can you -- 103
17 and -- who else, over there? What's your number,
18 sir?

19 MR. PRERSALL: Ninety-two.

20 MR. DELLINGER: Thank you.

21 MR. BUFFKIN: Good afternoon. My name
22 is Patrick Buffkin. I am a government affairs

1 specialist with North Carolina's Electric
2 Cooperatives. North Carolina Electric Membership
3 Corporation, or NCEMC, is a generation and
4 transmission cooperative that provides wholesale
5 power and other related services to 25 of the 26
6 electric cooperatives incorporated in North
7 Carolina. All of North Carolina's electric
8 cooperatives, known as electric membership
9 corporations, or EMCs, were created in the 1930s
10 and 40s to bring electric power to areas that were
11 deemed by other utilities as too remote and
12 uneconomical to serve.

13 Collectively, the EMCs of North Carolina
14 provide energy in 93 of North Carolina's 100
15 counties. North Carolina's 26 distribution EMCs
16 are independent, not-for-profit corporations.
17 Each cooperative is owned by its retail consumers
18 who elect its board of directors from among its
19 membership. NCEMC obtains its energy needs
20 through a combination of owned generating
21 facilities and a number of purchase power
22 agreements. While NCEMC does not have any

1 ownership interest in coal-fired generating
2 plants, it does obtain approximately 37 percent of
3 its energy needs from such facilities.

4 NCEMC supports the Federal regulation of
5 CCRs and urges the EPA to adopt a rule that
6 protects human health and the environment but that
7 does not unduly burden the economy or threaten
8 jobs and economic reliability. NCEMC favors the
9 development of regulations of CCRs under RCRA
10 Subtitle D non-hazardous waste program. We
11 believe that the Subtitle D Prime option is the
12 best one available.

13 It should be noted that NCEMC is
14 strongly opposed to the regulation of CCRs under
15 the RCRA hazardous waste program, the so-called
16 Subtitle C approach. Unlike the Subtitle C
17 approach, D Prime will enable the EPA to establish
18 an environmentally protective program without
19 crippling the beneficial use of CCRs and imposing
20 unnecessary costs on power plants that in turn
21 increase electricity costs.

22 In summary, NCEMC shares EPA's objective

1 of having a Federal regulatory program that
2 ensures the safe disposal of CCRs, and the D Prime
3 option would best meet this objective.

4 Thank you.

5 MR. DELLINGER: Thank you. Number 92?

6 MR. PRERSALL: I'm Sam Prersall. I'm
7 the southeast regional manager for the
8 Environmental Defense Fund, a national
9 conservation environmental organization with over
10 700,000 members. Today EDF has two primary
11 comments on the proposed regulations. First we
12 strongly recommend regulating coal combustion
13 residuals under RCRA Subtitle C. Second we discuss
14 serious concerns about prospective beneficial
15 uses. EDF believes the CCRs should be regulated
16 under Subtitle C. CCRs meet the criteria necessary
17 to list under Subtitle C due to their toxicity,
18 the potential for the hazardous constituents to
19 migrate or bioaccumulate, the potential for
20 mismanagement of the waste in cases in which
21 damage to human health or the environment has been
22 proven.

1 In addition to established risks, CCRs
2 pose other risks that have not been fully
3 explored. For materials of this character
4 Subtitle C is far more appropriate than Subtitle
5 D. A cradle-to-grave regulatory approach is
6 absent from EPA's proposal for beneficial uses.
7 For any proposed encapsulated beneficial use to be
8 considered safe as far as consideration of all the
9 risks or the full life cycle of a material,
10 including risks from production, use, recycling
11 and reuse, and the ultimate disposal of CCRs and
12 any products or materials containing them.

13 High temperature processes,
14 opportunities to off-gas, and exposures to water
15 all represent avenues whereby toxic components of
16 CCRs can leave the beneficial use chain and
17 directly enter the environment. Evaluating the
18 safety of all phases of the life-cycle of the
19 proposed use requires extensive information about
20 the CCR constituents, including total metal
21 content, chemical and physical form, fate and
22 transformational potential, solubility and other

1 factors related to the capacity of contaminants to
2 become bio-available under a broad range of
3 real-world conditions.

4 Safety also requires the ability to
5 track and monitor any such use over its full
6 life-cycle to ensure that no appreciable risk
7 could physically arise under worst-case scenarios
8 such as use or reuse in homes or hospitals or
9 schools.

10 Plainly put, only some encapsulated
11 beneficial uses can be considered truly
12 encapsulated over their entire life cycles. Those
13 that they can be, of course, are okay.

14 Non-encapsulated beneficial uses such as a soil
15 amendments, road beds or ice control pose such
16 direct risks to the environment and human health
17 that they should not be allowed.

18 Thank you very much.

19 MR. DELLINGER: Thank you. Numbers 313,
20 314, 315, and 316. Numbers 317 and 318. Number
21 317?

22 MS. HOLK: My name is Jane Holk. I live

1 in Winston-Salem, North Carolina. I'm just
2 finding out about this problem and I do think this
3 needs to be made more public so that more people
4 can come and speak. I've been concerned because
5 my family and I like to enjoy the benefits of
6 Belews Lake. We go and spend weekends there, and
7 I recently found out that coal ash is a problem,
8 that some of it has been sent into the water there
9 and that 16 species of 20 have been eliminated on
10 the lake. And in view of that, I'm very concerned
11 about my family, my children and my grandchildren,
12 the potential effects to them.

13 And I don't really understand how it can
14 be harmful -- One group says it's harmful, one
15 group says it's not. It either is or it isn't, so
16 it doesn't really make sense. I think it is
17 important to recycle what's been produced from
18 coal power plants. But at the same time it's the
19 government's job to create new green jobs that
20 would eliminate the coal producing plants
21 whatsoever. Solar, wind, geothermal or whatever.

22 And a lot of the industry people have

1 spoken have been concerned about their jobs. I'm
2 unemployed myself and I know what it feels like.
3 But I think of the long-term they're not really
4 looking out for the big picture that we're
5 poisoning ourselves incrementally, and also in
6 many different areas. And if we can stop this I
7 think proposal C would be the best option at this
8 time.

9 I also think that it's important for the
10 EPA to think about a compromise with the
11 environmental and citizen groups with the
12 industry, that they can both feel that they have
13 made some inroads, until these new jobs are
14 created. And I say protect our children, protect
15 ourselves, the environment, protect our water and
16 our air, and please protect the public health and
17 the future of the generations to come.

18 Thank you.

19 MR. DELLINGER: Thank you. Number 318.

20 MS. GRIFFITH: Good afternoon. I'm Dot
21 Griffith, and I live up in Linville, North
22 Carolina. And I'm a member Appalachian Voices and

1 also on their board.

2 A few years ago on Christmas day, I was
3 making dinner for my family and I was making a
4 pumpkin pie with my daughter, and I got a call
5 from a friend who said that I needed to get my
6 camera right away and go with the founder of
7 Appalachian Voices up in an airplane and go over
8 the Kingston coal spill and photograph it. So
9 with the blessing of my family I did, and I left
10 for about seven hours and photographed this
11 horrible disaster. And I brought you all some
12 pictures that I am sure you have seen, but you
13 haven't seen mine, probably. And so I'll leave
14 them with you.

15 This is the picture of the ash pond, the
16 berm that broke, and a picture of the houses that
17 were surrounded by this tidal wave of ash. And
18 another picture, also, of the ash sitting on top
19 of the Emory River and the houses that were bowled
20 over by the ash. Anyway, it was devastating that
21 day and has been ever since for that community.
22 And I would just like you all to take your "name,"

1 literally, and support and take care of our planet
2 and our communities.

3 And I support Section C (sic) and hope
4 that you all will also do that. Sorry.

5 Anyway, thank you.

6 MR. DELLINGER: Thank you. It's just
7 about 1:00. We're going to take a 15-minute break
8 and then start in with a new panel at 1:15.

9 (Whereupon, at 1:00 p.m., a
10 luncheon recess was taken.)

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1 your three minutes of testimony. To guarantee
2 that slot, we have asked that you sign in ten
3 minutes before your 15-minute slot at the
4 registration desk, which is just outside these
5 doors. All speakers, those that have
6 preregistered, and walk-ins, were given a number
7 when you signed in today and this is the order in
8 which you will speak. I will call speakers to the
9 table, or to those chairs over to my right, your
10 left, at four or five at a time. When your number
11 is called, please move to the microphone at the
12 podium and state your name and affiliation. The
13 panel may ask you to spell your name for the court
14 reporter, who is transcribing your comments for
15 the official record.

16 Because there are many people that have
17 signed up to provide testimony today and to be
18 fair to everyone, testimony is limited to three
19 minutes. We'll be using an electronic timekeeping
20 system and we'll also hold up cards to let you
21 know when your time is getting low. When we hold
22 up the first card, which is green, this means you

1 have two minutes left. When we hold up the second
2 card, you have one minute left, and at the third
3 card you will have 30 seconds. When the fourth
4 card, which is red, is held up, your time is up
5 and you should wrap up your remarks. When you
6 have completed speaking, please return to your
7 seat and remain there until all speakers in your
8 group have completed their testimony.

9 If you have a written copy of your
10 testimony, please place it in the box at the court
11 reporter's table to my left. Please remember, if
12 you do not get to finish your remarks, your
13 written comments will be entered into the record
14 just as if you had provided them orally. If you
15 did not get to finish and wish to submit written
16 comments today, please see our staff at the
17 registration table and they will provide you forms
18 for submitting written comments. And, also,
19 please remember that you may submit written
20 comments to us up until November 19th, 2010.

21 We will not be answering questions on
22 the proposal today. However, from time to time,

1 any of us on the panel may ask questions of you to
2 clarify your testimony. Our goal is to ensure
3 that everyone who has come today to present
4 testimony is given an opportunity to provide
5 comment. To the extent allowable by time
6 constraints, we will do our best to accommodate
7 speakers that have not preregistered. Today's
8 hearing is scheduled to close at 9 p.m., but we
9 will stay later, if necessary.

10 If, however, time does not allow you to
11 present your comments orally, we have prepared a
12 table in the lobby where you can provide a written
13 statement in lieu of oral testimony. These
14 written statements will be collected and entered
15 into the docket for this proposed Rule and will be
16 considered the same as if you presented them
17 orally.

18 If you would like to testify, but have
19 not yet registered to do so, please sign up at the
20 registration table. An agenda can be found in the
21 packet you received when you signed in today.
22 Also included is some material on the proposed

1 Rule as well as instructions for submitting
2 comments.

3 We are likely to take occasional breaks,
4 but we are prepared to eliminate or shorten the
5 breaks in order to allow as many people as
6 possible to provide their oral testimony.

7 Finally, if you have a cell phone, we
8 would appreciate it if you would turn it off or
9 turn it to vibrate. If you need to use your phone
10 at any time during the hearing, please move to the
11 lobby or somewhere outside the hearing room. We
12 ask for your patience as we proceed. We may need
13 to make some minor adjustments as the day
14 progresses.

15 Thanks, again, for participating and
16 let's get started with the afternoon session.

17 Could numbers 45, 46, 47, and 49 come to
18 the front of the room to the chairs, please.

19 Could 45 come to the phone podium.

20 MR. SILVA: Good afternoon. My name is
21 Edward Silva of Ronald Mark Associates, a company
22 based in New Jersey.

1 Today I am representing the Geosynthetic
2 Materials Association; a trade group of 80
3 companies that manufacture, distribute and install
4 geosynthetic materials, including liner systems.
5 The industry employs 12,000 people throughout the
6 United States.

7 Our comment to EPA is very simple: We
8 request that EPA mandate the geosynthetic lining
9 of coal ash storage facilities using composite
10 lining systems. In the shortest terms, use
11 liners; specifically, composite liners. Why?
12 Because liners work.

13 Concerns of safety regarding CCRs are
14 mitigated at the landfill starter sites; are lined
15 with a composite liner system of a geomembrane and
16 a geosynthetic liner. A composite liner system
17 prevents the leachate from entering the
18 environment. Safety concerns regarding surface
19 impoundments are also mitigated if the
20 impoundments are lined with a composite liner
21 system.

22 The American Society of Civil Engineers

1 does a regular report card on America's
2 infrastructure. Of the three report cards
3 representing over a decade, solid waste has
4 received the highest grade of any category. My
5 industry does a good job of taking America's waste
6 and properly storing it to protect the
7 environment. The materials, technology, and
8 people exist; the engineers, engineering
9 techniques and standards. The general contractors
10 and installers who can build the proper facilities
11 and the regulators and inspectors will assure the
12 work is done correctly. We urge EPA to use what
13 exists and is working today.

14 Further, our industry has continuously
15 improved over time and EPA has been a part of that
16 effort. Over the years, EPA has commissioned
17 nearly 80 studies of the design and performance of
18 liner systems.

19 We specifically call your attention to
20 2002 study titled, "Assessment and Recommendations
21 for Optimal Performance of Waste-Containing
22 Systems." That study contains a great deal of

1 pertinent information on how to construct
2 containment systems.

3 What is illustrated for today is a graph
4 charting the leakage rate of different designs
5 over the life cycle of nearly 200 facilities. The
6 composite liner system of a geomembrane and a
7 geosynthetic clay liner was demonstrated at the
8 lowest leakage rate over all life cycle stages,
9 including a near-zero leakage rate after the
10 facilities are closed and final cover placed. Our
11 materials work. Use of composite liner systems
12 will achieve the EPA's mission to protect human
13 health and the environment for all Americans.

14 A brief word on the hazardous or
15 nonhazardous question. While coal ash does
16 contain heavy metals, it lacks traditional
17 characteristics of hazardous materials;
18 radioactivity or the presence of infectious
19 medical waste. In the opinion of our trade
20 organization, coal ash can be properly stored
21 using Subtitle D regulations, a nonhazardous solid
22 waste designation with composite liner systems.

1 Thank you.

2 MR. BEHAN: Thank you. If everyone,
3 after you're done speaking, could put your
4 comments into the box here, that would be great.

5 Number 46.

6 MR. CARSON: My name is Hartwell Carson,
7 and I'm the French Broad Riverkeeper in Asheville,
8 North Carolina.

9 And I continue to hear the utility
10 industry claim that they're meeting all local,
11 State, and Federal regulations. This is a direct
12 quote from Progress Energy, and it's a gross
13 sleight-of-hand that suggests they are doing what
14 it takes to protect our environment and our
15 communities.

16 Nothing could be further from the truth
17 on the French Broad River where I am the
18 Riverkeeper. I recently spent an afternoon
19 canvassing the neighborhood that is located within
20 a couple hundred feet of these coal ash ponds
21 behind two of the nation's 49 high-hazard coal ash
22 dams. I heard stories of coal ash blowing into

1 people's homes on a daily basis. We found
2 drinking water wells that they had no idea that
3 they were next to coal ash ponds that have 116
4 exceedances of State groundwater standards. And
5 no one knows how many other wells are in the
6 neighborhood, and no one's looking to see what
7 water quality violations exist in their drinking
8 water. We scooped coal ash out of one person's
9 windowsill and heard stories of it getting into
10 people's cars' ventilation systems and continuing
11 to circulate for months.

12 The implementing regulations that don't
13 establish meaningful oversight will do nothing to
14 protect the French Broad River and the communities
15 around this plant. The utility industry claims
16 that coal ash is just like dirt. The recent tests
17 on the French Broad River showed fish with
18 alarmingly high levels of selenium, water samples
19 that showed arsenic at over 18 times the human
20 health standard for the state of North Carolina
21 and arsenic and sediment samples at over 80 times
22 the background what naturally occurs in soil.

1 This is not just like dirt. And because of this,
2 this community is at risk and their health has
3 been shown to be declining.

4 Since Progress Energy in Asheville is
5 running out of room to store more coal ash, they
6 are aggressively looking at opportunities to
7 recycle this ash, and this is including putting
8 650,000 tons of coal ash to fill in a stream in a
9 valley just above a trailer park community that is
10 all on drinking water wells. And I've personally
11 scooped coal ash out of this stream right next to
12 the doors of these homes and next to these
13 drinking water wells.

14 So the utility industry cannot continue
15 to act as if all beneficial use will benefit
16 anyone other than the utility industry. The
17 utility industry also continues to support
18 additional regulations of coal ash. And I'm glad
19 that we can agree that additional regulations are
20 needed, but we can't stand up here today and
21 continue to let the fox guard the henhouse.

22 Coal ash must be classified as a

1 hazardous waste with real, meaningful oversight.
2 And Subtitle C is the only regulation that will
3 accomplish this goal.

4 Thank you for your time.

5 MR. BEHAN: Thank you. Number 47.

6 SPEAKER: Hi, I'm (inaudible), and I
7 could say what he just said. Note that. Ditto.

8 But I'm a mom, and I'm actually paying a
9 babysitter so that I could come here today and
10 hang out a lot on the playgrounds of Charlotte.
11 And it gets a little tiring just talking about
12 what Little Johnny has for lunch every day, so we
13 started talking about Subtitle D and Subtitle C
14 instead.

15 And I just want you to know that five
16 years ago a lot of the people I spoke to really
17 believed that, oh, the government is protecting
18 us; our water is safe to drink. And now it's a
19 completely different situation and people are
20 paying attention and parents are very concerned
21 about what's in their children's water,
22 particularly in Charlotte in our air where we have

1 some of the worst air in the entire country.

2 Maybe I'm a little naïve. I don't know
3 why we're choosing this, but I just wanted to
4 really make sure that you're hearing from many,
5 many parents in Charlotte. Lots and lots of my
6 friends and folks that I talked to said, yes, you
7 should go to that hearing. You should say
8 something. Just say we all care about this. We
9 really want you to support Subtitle C.

10 Thank you.

11 MR. BEHAN: Thank you. Number 49.

12 DR. PATRIE: I'm Dr. Lewis Patrie, chair
13 of Western North Carolina Physicians for Social
14 Responsibility from Asheville, speaking on behalf
15 of Physicians for Social Responsibility, a
16 nationwide network of medical and public health
17 professionals.

18 We believe mandatory Federal regulation
19 of coal ash disposal by the EPA is essential.
20 Coal ash typically contains heavy metals,
21 including arsenic, lead, mercury, cadmium,
22 chromium, selenium, plus other toxins. They can

1 cause cancer and nervous system illnesses such as
2 cognitive deficits, developmental delays and
3 behavioral problems, also heart damage, lung,
4 kidney and gastrointestinal diseases, reproductive
5 problems and birth defects.

6 Coal ash's toxic contaminants leak into
7 the surface and groundwater. EPA estimates that
8 140 million tons of coal ash are generated
9 annually. Coal ash is disposed at nearly 1,000
10 sites across the nation, including many in North
11 Carolina.

12 EPA is considering adopting mandatory
13 federal rules that would phase out leak- and
14 spill- prone wet storage of coal ash, require
15 storage areas to be lined and take other steps to
16 minimize toxic contamination of surfaces,
17 groundwater, and in a number of places, such as
18 drinking wells.

19 Increasingly, opponents of federal
20 regulation of toxic substances argue that
21 regulations that stigmatize coal ash would hurt
22 the economy at a time when many people struggle

1 with unemployment, rising prices and financial
2 insecurity. PSR avows that coal ash should be
3 stigmatized, considering the price of pollution
4 and misery and health care costs. We pay in
5 healthcare and health insurance costs, lost days
6 from work and school when we suffer physically,
7 economically, and emotionally from illnesses and
8 premature deaths, and when our children are
9 permanently deprived of their capacity for normal
10 intellectual development.

11 We suggest you compare costs versus
12 benefits comparing employment and economic losses
13 that might be experienced by polluting industries
14 with those health costs resulting from toxic
15 pollution, such as has been applied to tobacco and
16 health in the past and as being currently applied
17 to the problem of childhood obesity.

18 Furthermore, costs of burning coal and
19 the use of nuclear power to create electricity
20 should be compared to those of retrofitting
21 millions of homes and other buildings with
22 energy-saving measures, plus a dramatic switch to

1 truly renewable energy resources, thus reducing
2 our dependence on fossil fuels, a major cause of
3 global warming.

4 Support Option C (sic). Thank you.

5 MR. BEHAN: Thank you. Could numbers
6 50, 51, 53, 54 come forward.

7 MR. EVERETT: Good afternoon. My name
8 is George Everett. I'm director of Environmental
9 and Legislative Affairs for Duke Energy.

10 Duke Energy strongly supports RCRA's
11 Subtitle D nonhazardous program to regulate coal
12 ash residuals, and specifically the D Prime
13 Option. Subtitle D would raise the bar nationally
14 for surface impoundment safety and achieve the
15 environmental protection we all seek without the
16 exponential costs and damaging consequences to the
17 beneficial reuse industry. What would Subtitle D
18 do? It would require electric utilities to either
19 remove solids from existing surface impoundments
20 and retrofit them with a composite liner or cease
21 receiving residuals within five years of the
22 effective date and close the unit. New

1 impoundments could only be constructed with
2 composite liners. Groundwater monitoring would be
3 required for all new and old landfills, provide
4 continual assessment of any possible groundwater
5 impacts.

6 Utilities have safely managed residuals
7 and hundreds of surface impoundments for decades.
8 In the Carolinas, Duke Energy has had a robust
9 monitoring maintenance inspection program for all
10 of its ash basins since 1976. This involves daily
11 observations, monthly inspections by plant staff,
12 plus additional inspections anytime there are two
13 inches of rain in 24 hours. Additional
14 inspections by a licensed professional engineer
15 and inspection every five years by an independent
16 engineer have now been replaced due to new
17 legislation in North Carolina with inspections by
18 the North Carolina Dam Safety Program. This
19 program was in place well before EPA's inspections
20 currently underway.

21 It's also important to note, for those
22 who have talked about Subtitle C, there are

1 currently no permitted hazardous waste landfills
2 in North or South Carolina. Consequently, a
3 Subtitle C regulatory program would place an
4 enormous burden for both the State's regulatory
5 programs and utilities and, finally, permit
6 disposal sites to handle the CCRs and meeting
7 these proposed regulations.

8 Dam stability is a critical piece of
9 this regulatory puzzle. Quite simply, a Subtitle
10 C hazardous designation coal ash is not warranted
11 to ensure the structural stability of surface
12 impoundments.

13 Thank you.

14 MR. BEHAN: Thank you. Number 51.

15 MS. CAPOLA: Good afternoon. My name is
16 Barbara Capola. I am the manager of coal by-
17 products and reagents for Progress Energy,
18 Incorporated, an investor-owned electric utility
19 holding company.

20 Our utility owns and operates nine
21 facilities located in North Carolina, South
22 Carolina, and Florida with a combined electric

1 power generating capacity of over 7,400 megawatts
2 that would be impacted by the proposed
3 regulations. At our service territories we
4 provide retail electric service to over three
5 million customers who could see their monthly
6 electric bills affected by the cost incurred due
7 to this regulation.

8 Progress Energy supports the development
9 of Federal regulations for CCRs under RCRA
10 Subtitle D Prime. The development of Rules under
11 this approach will establish a Federal standard
12 for all CCR facilities to meet. Many states
13 already have effective solid waste statutes and
14 regulatory programs that will provide an
15 additional layer of regulatory oversight for
16 management reuse and disposal of CCRs.

17 Progress Energy strongly opposes the
18 regulation of CCRs under Subtitle C. The
19 comparatively stringent and costly Subtitle C
20 program is not necessary to manage the relatively
21 low toxicity of CCRs. An important aspect of the
22 CCR regulation issue in terms of both cost and

1 effective disposal is the availability of adequate
2 infrastructures, specifically landfills, that can
3 and will accept hazardous waste.

4 There are 21 commercial hazardous waste
5 landfills currently operating nationwide, and the
6 last hole was permitted many, many years ago. The
7 remaining capacity would quickly be consumed if
8 such a landfill was required. In addition,
9 transportation and infrastructure would see
10 unparallel changes due to increased volumes of
11 material movement. Nonetheless, reliable and
12 nearby hazardous waste landfills must be available
13 if Subtitle C is applied to CCRs.

14 EPA's proposal to not regulate CCRs for
15 beneficial use is appropriate for a regulatory
16 program under Subtitle D Prime. Most utilities
17 endeavor to market as much of their CCRs as
18 possible. This is better for the environment, the
19 land or pond disposal, and provides unique and
20 valued materials for many manufactured products,
21 including high-quality cement and wallboard.

22 EPA should be aware that the beneficial

1 use marker for CCRs is susceptible to market
2 variations, which limits reliance on beneficial
3 uses. Today, the supply of fly ash for cement and
4 concrete and the supply of synthetic gypsum for
5 wallboard far exceeds market demand. We need to
6 find ways to increase the consumptions of CCRs in
7 these markets.

8 There have been many key drivers to
9 reuse volumes. In 2008, over 30 percent of the
10 nearly 61 million tons of CCRs used were in other
11 market applications. With the proper engineering
12 design controls and quality assurance programs in
13 place, Progress Energy supports other market
14 applications. While we are working diligently to
15 beneficially use CCRs, there will remain a
16 significant quantity of CCRs that must be disposed
17 of in landfills.

18 It should be considered that even with
19 strong efforts to beneficially use CCRs, a
20 permanent disposal option at reasonable cost will
21 still be needed.

22 Thank you.

1 MR. BEHAN: Thank you. Number 53.

2 MR. MULLINGS: Hello. My name is Gary
3 Mullings. I'm the senior vice president of
4 operations and compliance for the National Ready
5 Mix Concrete Association.

6 As a matter of scale, ready mix concrete
7 consumes 75 percent of all Portland cement used in
8 this country. Concrete is the most widely used
9 construction material in the world and is produced
10 and consumed in every congressional district of
11 our country. With regard to fly ash, a major
12 portion of coal combustion residuals, the ready
13 mix concrete industry is the largest beneficial
14 user.

15 Surveys of ready mix concrete producers
16 show that over 55 percent of all ready mix
17 concrete contains fly ash. Fly ash is used in
18 combination with Portland cement to impart the
19 following benefits to concrete: Number one, it
20 increases the durability and service life of
21 structures. Number two, there's a reduction in
22 waste sent to landfills. Three, there's a

1 reduction in raw materials extracted and reduction
2 in energy for production and air emissions,
3 including CO2. And it lowers concrete costs for
4 the consumers.

5 While the concrete industry currently
6 uses about 15 million tons of fly ash annually, it
7 is estimated that the concrete industry could
8 increase its current use to more than 30 million
9 tons per year by 2020 resulting in less fly ash
10 going into landfills and reducing the concrete
11 industry's carbon footprint by some 20 percent.

12 Based on the concrete industry's
13 extensive use of and reliance of fly ash in
14 concrete, and after examining the EPA's proposed
15 Rule, NRMCA has determined that Subtitle C
16 designation for CCRs down for disposal while
17 retaining any exemptions for beneficial use will
18 lead to the following unintended consequences for
19 the concrete industry. Number one, an increase in
20 production costs and costs of construction
21 resulting in less concrete production, thus, less
22 opportunity to use fly ash in a beneficial way.

1 Number two, an increase in potential liability for
2 concrete producers.

3 Currently, the regulatory status of
4 small amounts of fly ash in waste streams for
5 concrete production is unclear. Any proposed
6 Rule, including Subtitle D, must explicitly state
7 that small waste streams from the concrete
8 industry are exempt from such regulations. There
9 will also be litigation, which will target
10 existing structures built with fly ash concrete.
11 Three, potentially stricter laws impacting
12 beneficial use; for example, there's a proposed
13 Rule in Maryland which states that any concrete
14 containing fly ash to be disposed of in a special
15 facility authorized to accept fly ash. Number
16 four, the potential elimination of fly ash
17 concrete. A hazardous waste stigma and fear of
18 liability will drive specifiers, engineers,
19 architects, and end users to disallow fly ash in
20 concrete. For example, the Los Angeles Unified
21 School District has banned the use of fly ash
22 until this panel and EPA finalize this Rule. And,

1 number five, there will be a drastic reduction in
2 fly ash use in our nation.

3 Thank you very much for hearing our
4 concerns. Appreciate it.

5 MR. BEHAN: Thank you. Number 54.

6 REV. RHOADES: Good afternoon. I'm
7 Reverend Lynn Rhoades, pastor of a congregation in
8 Stokes County. We are a rural people who had many
9 tobacco farms at one time and are transforming
10 those into vegetable farms trying to support our
11 local folks and the folks next door in Forsyth
12 County. We are people who enjoy the land and
13 water, paddling and fishing in the Dan River and
14 visiting Belews Lake. And, yet, we notice the
15 rise of cancer in our community and we wonder.
16 Concerns grow.

17 At the Duke Energy coal station at
18 Belews Creek in Stokes County, we have watched a
19 beautiful lake die. In the '70s and '80s, Duke
20 Energy used the lake as a cooling pond and stored
21 coal ash in a settling basin, which leaked
22 selenium into the lake killing 16 of the 20

1 species of fish living there, including all the
2 primary sport fish.

3 In 1985, the state ordered Duke to
4 change coal ash disposal methods, but the ash is
5 still being stored at several ash storage
6 landfills which are currently leaking toxic
7 chemicals into groundwater. You have heard these
8 listed. There is no controversy that the
9 chemicals in coal ash are dangerous to our health.
10 Humans have not evolved to adapt to any of these
11 chemicals, no matter what the level.

12 Just a generation or two in the past,
13 the groundwater in North Carolina was pure and
14 there were no measurable quantities of coal ash
15 chemicals in our body tissue and organs. Today,
16 we are gambling with the help of our water and
17 therefore our life.

18 We question the effectiveness of
19 regulating coal waste in our county. Data from
20 Belews Creek power plant and others in North
21 Carolina show that the groundwater on these sites
22 is already well above safe levels and may be

1 leaking to our groundwater. Local residents there
2 have not received answers regarding the effect of
3 the wash water as a result of cleaning the stacks
4 at the power plant a few years ago.

5 But hope is ever present in the human
6 heart and we are gladdened by EPA's willingness to
7 review their regulations. Option C (sic) will
8 give EPA the authority to establish cradle to
9 grave monitoring of coal ash, close toxic ponds,
10 and regulate it as a hazardous waste, special
11 waste. North Carolina Interfaith Power and Light,
12 an organization in affiliation with North Carolina
13 Council of Churches, supports Option C (sic).

14 As citizens, we have the ultimate
15 responsibility of care for our communities. From
16 a faith perspective, we are co-creators of God to
17 care for and delight in God's creation.

18 Thank you.

19 MR. BEHAN: Could numbers 55, 56 and 57
20 and 58 come forward, please.

21 MR. HARGETT: My name is Travis Hargett.
22 I'm the volunteer coordinator for the North

1 Carolina Sierra Club.

2 About a month and a half ago, I had the
3 opportunity to go visit a community outside of
4 Asheville in Arden, North Carolina right behind
5 Progress Energy's coal-fired generation facility
6 and outside of their coal ash pond. And I got the
7 chance to talk to a man, and I was explaining what
8 coal ash is and the toxic substances that are in
9 it. And then I pointed behind him and I said, "A
10 couple hundred yards up that hillside is a coal
11 ash pond." And he said, very surprisingly, "Oh,
12 is that what that is?" He had no idea. I then
13 ran my finger across the side of his house and my
14 finger was pitch black. He had no idea. I can't
15 imagine growing up in such an environment where
16 coal ash is just so present every day. But, you
17 know, that day I was able to educate maybe four or
18 five citizens. It's the EPA's job to not only
19 educate, but also protect the majority of our
20 citizens. And to adequately do that, you must set
21 up federally enforceable regulations under
22 Subtitle C.

1 Moving beyond coal is a challenge of my
2 generation. You will hear from a number of
3 students today. We are studying a wide variety of
4 subjects from engineering to dance to
5 environmental science. And we are here together
6 because we understand the risks associated with
7 under-regulated CCRs.

8 As we work to transition away from coal,
9 we must ensure that we continue to protect the
10 health and welfare of our citizens. A professor
11 once told me that the status quo is a sinking
12 ship. Well, regulation under Subtitle D is that
13 sinking ship. We cannot let industrial use of fly
14 ash be used as an excuse for inaction. I urge you
15 to Subtitle C.

16 Thank you.

17 MR. BEHAN: Number 56.

18 MS. CHOI: Good afternoon. My name is
19 Caroline Choi. I'm executive director for
20 environmental services and strategy at Progress
21 Energy. I am testifying today on behalf of the
22 Utility Solid Waste Activities Group, or USWAG, an

1 association of over 110 electric utilities and
2 trade associations.

3 Let me say, at the outset, that the
4 question for us is not whether to regulate, but
5 how to regulate. USWAG favors the development of
6 federal regulations for coal ash under RCRA's
7 Subtitle D nonhazardous waste program. Of the
8 three options presented by EPA, the Subtitle D
9 Prime option, with appropriate adjustments, is the
10 best path forward. Unlike the Subtitle C
11 approach, D Prime will enable EPA to establish an
12 environmentally protective program without
13 crippling coal ash beneficial use and imposing
14 unnecessary costs on power plants, threatening
15 jobs and increasing electricity costs. Even EPA
16 has agreed that hazardous waste regulation will
17 result in excessive and unnecessary regulation.
18 In its final regulatory determination for the four
19 large volume coal ash waste streams where EPA
20 concluded that hazardous waste regulation was not
21 warranted for coal ash, the agency found that the
22 inflexible nature of the federal hazardous waste

1 program would result in excess costs and unduly
2 burdensome regulations for coal ash.

3 Let me quote from the portion of EPA's
4 final regulatory determination on this point: A
5 Subtitle C system would require coal combustion
6 waste units to obtain a RCRA Subtitle C permit,
7 which would unnecessarily duplicate existing State
8 requirements and would establish a series of waste
9 unit design and operating requirements for these
10 wastes, which would generally be in excess of
11 requirements to protect human health and the
12 environment. Since coal ash sites vary widely in
13 terms of topographical, geological,
14 climatological, and hydrological characteristics,
15 for example, depth to groundwater, annual
16 rainfall, distance to drinking water sources, soil
17 type, and the wastes potential to leach into the
18 groundwater and travel to exposure points is
19 linked to such factors, it is more appropriate for
20 individual states to have the flexibility
21 necessary to tailor specific controls to the site
22 or region-specific risks proposed by these wastes.

1 We couldn't have said it better, and
2 nothing has changed since issuance of that
3 determination that alters this conclusion.

4 Moreover, while we agree that steps must
5 be taken to prevent accidents like that which
6 occurred at TVA's Kingston facility from happening
7 again, even EPA has found that coal ash being
8 recovered from that site can be safely disposed of
9 in a RCRA Subtitle D nonhazardous waste facility.
10 The coal ash from the accident that was the
11 impetus for this rulemaking proceeding is, with
12 EPA's explicit approval, being safely disposed of
13 in a Subtitle D nonhazardous waste facility. And
14 just last week, the Tennessee Department of
15 Health, in conjunction with the Federal Agency for
16 Disease Registry and Toxic Substances, issued a
17 final public health assessment concluding that the
18 coal ash from the accident did not result in
19 groundwater contamination nor result in ambient
20 releases of ash above levels of concern.

21 USWAG supports federal Subtitle D
22 controls for coal ash, including dam integrity

1 standards to help prevent future coal ash releases
2 like that which occurred at TVA from happening
3 again.

4 Thank you.

5 MR. BEHAN: Thank you. Number 57.

6 MR. STANISLAWCZYK: My name is Steven
7 Stanislawczyk, and I'm the environment manager for
8 Harsco Minerals, a division of the Harsco
9 Corporation. I have been an environment engineer
10 for about 15 years working in the manufacturing
11 and/or processing industry for 15 years. Harsco
12 Corporation, headquartered in Pennsylvania, is an
13 international industrial service company employing
14 22,000 employees worldwide.

15 Harsco has partnered with the EPA in the
16 past; the most recent partnership was celebrated
17 in June of this year to remediate the Gulf States
18 Steel Superfund Site located in Gadsden, Alabama.
19 Harsco Minerals operates 15 boiler slag operating
20 facilities. Eight are within 500 miles of
21 Charlotte. They're located throughout the East
22 Coast where boiler slag is used beneficially to

1 make abrasives and roofing granules. It has been
2 since the 1930s. Over a million tons of boiler
3 slag is processed each year by Harsco alone.

4 I am in support of regulating boiler
5 slag under Subpart D.

6 Boiler slag is one of the four coal
7 combustion by-products listed in this proposed
8 Rule. Boiler slag only makes up 2 percent of the
9 total CCB volume. The vast majority of boiler
10 slag is recycled into valuable product. I'm only
11 the second person to talk about boiler slag.
12 Boiler slag is only produced from special types of
13 combustion boilers where the molten material is
14 quenched with water creating a vitrified amorphous
15 nonporous solid mass where any metals are made
16 into inert silicates. You can see it's different
17 than coal ash. It's a solid mass.

18 Historically, boiler slag has always
19 passed the TCLP testing and has never exhibited
20 any hazardous waste characteristics. Harsco also
21 ran the material through the ultimate leachate
22 testing method that was referenced in the proposed

1 Rule that was conducted at Vanderbilt University;
2 boiler slag passed all leaching scenarios even at
3 very high and low digestion pHs.

4 Harsco is not aware of any referenced
5 damage cases in the proposed Rule that was the
6 result of mismanagement of boiler slag. Boiler
7 slag is not commonly stored in surface
8 impoundments. Harsco does not store any of our
9 products, raw or processed, in any surface
10 impoundments. Regulating boiler slag destined for
11 disposal as a special waste under Subtitle C would
12 unfairly stigmatize beneficially used products
13 such as boiler slag.

14 In summary, placing an unneeded stigma
15 on an inert product beneficially used since the
16 1930s will add millions of tons of extra
17 nonhazardous waste into already crowded hazardous
18 waste landfills and significantly increase the
19 demand for mined virgin minerals, which has far
20 greater carbon footprint, to replace recycled
21 boiler slag.

22 Thank you.

1 MR. BEHAN: Thank you. Number 58.

2 MS. RENNICK: Good afternoon. My name
3 is Jennifer Rennick, and I am the federal policy
4 director for a regional nonprofit organization
5 called the Southern Alliance for Clean Energy. I
6 am also the mother of two young children, and I am
7 a concerned citizen. And I'm very pleased to have
8 the opportunity to speak today in support of the
9 Subtitle C designation for coal ash under the
10 Resource Conservation and Recovery Act.

11 In my professional capacity, I track how
12 our federal legislative and regulatory systems
13 make and enforce laws in this country. And I've
14 had the opportunity first hand to see time and
15 time again why voluntary measures, such as those
16 that would result from the Subtitle D option,
17 simply do not work; particularly not when we're
18 speaking about for-profit ventures. Unless this
19 industry is required by law to follow particular
20 guidelines, there is no guarantee that public
21 health and safety will be assured. In fact,
22 regulating coal ash, which, as we've heard several

1 times today, contains, among other substances,
2 lead, mercury, cadmium, chromium -- to regulate
3 this in the same category as banana peels, soda
4 cans and other household waste is truly
5 unthinkable to me, particularly as a mother.

6 And I don't believe that citizens should
7 have to sue after the fact for compensation or
8 remediation in the event of another coal ash
9 disaster, such as what happened in Harriman,
10 Tennessee in December of 2008. And I do believe
11 the correct word there is "when" we have another
12 coal ash disaster, and not "if."

13 We should have the strongest public
14 health protections from the start, and I believe
15 that establishing the long overdue and robust
16 standards that would result from a Subtitle C
17 designation will help ensure that we have the best
18 protections for our water, our air, and our
19 children's future. I do not believe that
20 environmental protection is a luxury as some
21 utility spokespersons have suggested. I believe
22 that these are fundamental rights and rights that

1 we all have a shared responsibility to protect.

2 And I trust and hope that the EPA is
3 going to do the right thing at the conclusion of
4 this hearing process and recommend a Subtitle D
5 (sic) designation.

6 I want to thank you for your
7 consideration, and I especially want to thank you
8 for choosing my home state to hold one of these
9 very critical and essential hearings.

10 MR. BEHAN: Thank you. Number 59,
11 number 60. Is there anyone in the room that has a
12 number below 60 that has not spoken that's here?

13 (No audible response.)

14 MR. BEHAN: We've had a couple of
15 no-shows, and I am going to go back and call up
16 two people that were called in the morning session
17 to see if they're in the room; that is 208 and
18 209. Are they here? How about 164? 313 or 314?
19 316? Go ahead, sir.

20 MR. GASKINS: My name is Richard
21 Gaskins, and I'm the Executive Director of the
22 Catawba Riverkeeper Foundation, and that's a

1 relatively new position for me. I've been working
2 on coal ash issues for over 30 years as both an
3 engineer and as an attorney. For most of that
4 time I was in private practice, and during that
5 time, among other things, I chaired multiple ASTM
6 committees that were drafting standards relating
7 to coal ash. So this is not something that's
8 really new for me. And if it was new, I think I
9 would be inclined maybe to have a more lenient
10 approach and say that states can handle it and
11 industry can self- police, but in my experience,
12 that hasn't worked. And I've seen a lot of people
13 during my years of private practice come to me
14 with contamination problems and really not have a
15 good remedy.

16 So I want to urge you to regulate coal
17 ash under Subtitle C as a hazardous waste. And I
18 specifically want to point out one example, which
19 I think is a little bit absurd, which is, on the
20 Catawba River we have four high-hazard coal ash
21 ponds. Two of those ponds are on Mountain Island
22 Lake, which is the source of drinking water for

1 approximately 750,000 people. Charlotte uses
2 about 113 billion gallons a day from that lake.
3 If one of those ponds ruptured, that would be a
4 serious problem. Charlotte doesn't have another
5 source of drinking water for that much water
6 currently in place. The current regulatory
7 structure has not been adequate to really prevent
8 that. And we think that better regulation is
9 needed to ensure that our drinking water is
10 protected.

11 So I urge regulation under Subtitle D
12 (sic). And the rest of my remarks will be in the
13 written remarks.

14 Thank you.

15 MS. REEVES: Good afternoon. My name is
16 Ulla Reeves and I am the regional program director
17 for the Southern Alliance for Clean Energy. We
18 are a regional organization, representing citizens
19 across the heavily coal dependent states of the
20 Southeast, and we support listing coal combustion
21 residuals as a special waste under Subtitle C of
22 the Resource Conservation and Recovery Act. We've

1 arrived at this position through our understanding
2 of the serious impacts that even trace amounts of
3 hazardous chemicals can have on our bodies and the
4 environment.

5 Of particular concern are the dozen
6 high-hazard coal ash ponds here in North Carolina.
7 It is unacceptable that we have so many
8 unregulated, dangerous toxic waste dumps looming
9 over us threatening our lives and our ways of
10 life. We know from firsthand experience the
11 devastation that coal ash spills have on local
12 communities and firmly believe we need stronger
13 standards for managing and ensuring this waste
14 does not devastate more communities, homes, lives,
15 and waterways, like those so affected by TVA's
16 Kingston disaster in 2008.

17 Subtitle C is by far the best option for
18 handling coal ash waste because the alternative,
19 Subtitle D, merely establishes unenforceable and
20 optional suggestions for regulation. Given the
21 high levels of arsenic, mercury, aluminum and
22 other hazardous constituents that leach from coal

1 ash into the environment, comprehensive,
2 enforceable regulation from cradle to grave is the
3 most responsible means of handling this waste.

4 Industry's loudest argument to date in
5 this discussion has not been a legal argument
6 about enforceability or a scientific argument
7 about toxicity, but rather, a vague social
8 argument, contending that classification of coal
9 ash under Subtitle C would stigmatize it for
10 beneficial uses. We believe that stigma ought not
11 outweigh the real threats to human health and the
12 environment. If we are considering stigma, we
13 should equally consider the stigma coal ash
14 carries on public health, our water, and our land.

15 EPA already anticipated industry
16 concerns over public perception and decided that
17 if listed under Subtitle C, coal ash will be
18 designated as a special waste, not a hazardous
19 waste. Moreover, coal ash destined for beneficial
20 use would not be subject to hazardous waste rules
21 under Subtitle C. EPA's own analysis suggests
22 that special waste designation will actually

1 increase beneficial uses because the cost of ash
2 disposal under Subtitle C will increase, thereby
3 incentivizing recycling as opposed to dumping.

4 I'd like to thank EPA for announcing a
5 public hearing in east Tennessee to hear the
6 voices of those who have firsthand experience.
7 And I'm here today, in addition to these comments,
8 to deliver the official testimony from those
9 citizens who traveled there.

10 MR. BEHAN: Thank you. Is number 61 in
11 the room?

12 (No audible response.)

13 MR. BEHAN: Numbers 62, 63 and 313.

14 MR. CONRAD: My name is Dan Conrad. I'm
15 an attorney and a policy analyst for the North
16 Carolina Conservation Network, a nonprofit
17 organization comprised of over 100 affiliate
18 environment organizations, and 13,000 concerned
19 citizens here in North Carolina.

20 In my testimony today I would like to
21 enter two items into your official record, and
22 make a few brief comments in favor of coal ash

1 regulation under Subtitle C of RARA.

2 The first item I would like to enter
3 into the record is a memo endorsed by 17
4 environmental North Carolina groups, detailing the
5 need for coal ash regulation in North Carolina.

6 The second item is a petition signed by
7 over 1500 concerned North Carolina citizens urging
8 that the EPA enact the more stringent of their two
9 proposals, under Subtitle C of RARA.

10 RCRA defines "hazardous waste" as a
11 solid waste or combination of solid wastes, which
12 because of its quantity, concentration, or
13 physical, chemical, or infectious characteristics
14 may, A, cause or significantly contribute to an
15 increase in mortality or an increase in serious
16 irreversible or incapacitating reversible illness;
17 or B, pose a substantial present or potential
18 hazard to human health or the environment when
19 improperly treated, stored, transported, or
20 disposed of, or otherwise managed.

21 I'd like to draw your attention to two
22 specific words in the statute: "may" and "or."

1 "May" indicates not that an outcome must occur,
2 but rather only that it possibly could occur. The
3 word "or" establishes that only one of the two
4 listed criteria must be met. I would submit to
5 you that coal ash actually meet both criteria A
6 and criteria B of the definition.

7 Regarding criteria A, the EPA itself has
8 concluded that 49 high hazard potential coal ash
9 surface impoundments exist in the United States,
10 12 in North Carolina alone. According to the EPA,
11 high hazard potential indicates that a failure
12 will probably cause loss of life. It is difficult
13 for me to imagine a case where loss of human life
14 would not qualify as an increase in mortality.

15 Regarding criteria B, all 13 of the coal
16 ash ponds in North Carolina that have conducted
17 testing have been found to exceed North Carolina
18 groundwater standards. In one case, arsenic
19 concentrations were measured at 44 times the
20 primary maximum contaminant level. Again, it is
21 difficult to imagine a scenario where arsenic
22 concentrations found in contaminated groundwater

1 at 44 times the federal MCL would not possibly
2 pose a substantial present or potential hazard to
3 human health or the environment.

4 Under either criteria, it is evident
5 that coal ash is encapsulated by RCRA's definition
6 of hazardous waste. With that in mind, the North
7 Carolina Conservation Network urges that at a
8 minimum the EPA adopt the more stringent of its
9 two current proposals, regulating coal ash under
10 Subtitle C of RCRA.

11 Thank you for your time and the
12 opportunity to speak today.

13 MR. BEHAN: Thank you. Number 63?

14 MR. WHELLER: My name is Cam Wheeler and
15 I'm an environmental specialist for Progress
16 Energy Incorporated, a utility headquartered in
17 North Carolina. Our subsidiaries own and operate
18 coal- fueled facilities located in North Carolina,
19 South Carolina, and Florida.

20 Progress Energy supports the development
21 of Federal regulation of coal combustion products
22 under RCRA Subtitle D non-hazardous waste. The

1 development of rules under this approach will
2 establish a federal standard enforceable for all
3 CCR facilities. Green states, including at the
4 states' Department of Energy already operates
5 already have effective solid waste statutes and
6 regulatory programs, and will provide an
7 additional layer of regulatory oversight for
8 management, reuse, and disposal of CCRs. Any new
9 federal rules should incorporate measures to allow
10 existing state regulations comparable to federal
11 requirements to play an active part in the CCR
12 regulatory program at the state level.

13 Progress Energy strongly opposes the
14 regulation of CCRs under RCRA Subtitle C. Should
15 the EPA list CCRs as a special waste, they would
16 be subject to the full hazardous waste control,
17 just as any other waste listed as hazardous. A
18 comparatively stringent and costly Subtitle C
19 program is not necessary to effectively manage and
20 safely dispose of CCRs.

21 Progress Energy is confident that
22 regulation of CCRs under Subtitle D Of RCRA is the

1 right choice for efficient and protective
2 beneficial use and disposal.

3 MR. BEHAN: Thank you. Number 64?

4 MS. ELLIS: Hello. My name is Christine
5 Ellis. I'm a Waccamaw Riverkeeper from Conway,
6 South Carolina. As the Waccamaw Riverkeeper, I
7 advocate for the protection of the Waccamaw
8 watershed, a coastal plain river located in
9 southeastern North Carolina and northeastern South
10 Carolina, and that drains to Winyah Bay, the
11 third-largest estuary on the eastern seaboard.

12 The Waccamaw River is a significant
13 feature in our area. It's our source of drinking
14 water. It affords myriad recreational
15 opportunities: Fishing, swimming, boating,
16 aesthetic beauty, and supports a unique and
17 diverse flora and fauna. It flows through the
18 city of Conway and in fact the city of Conway has
19 embraced the river for all of its benefits, both
20 environmental and economic. The city of Conway
21 and the Waccamaw River lie within the shadow of
22 the Dolphus M. Grainger steam generation station.

1 The Grainger plant, owned by Central Electric
2 Power Cooperative, and operated and maintained by
3 Santee Cooper, began operation in 1966. It has
4 two ash ponds. The first was constructed in '66,
5 then expended in '67. The second was constructed
6 in '77 and expanded in 1990. In 2009, a Santee
7 Cooper task force was struck to evaluate the need
8 and extent for future structural integrity testing
9 of those two ponds. These units, as you know, are
10 not regulated by state or federal agencies.

11 In 2000, nine years before the task
12 force was struck, Santee Cooper reported that
13 groundwater monitoring results showed arsenic
14 concentrations above the drinking water standard.
15 The two wells in fact had extremely high
16 concentrations, up to 91 times the drinking water
17 standard.

18 Surface water sampling was taken up in
19 2001, 2006 and 2010 and not yet had there been
20 shown to be concentrations of arsenic in surface
21 water above drinking water standards. However, I
22 say not yet because even though there's no data

1 for the Waccamaw River, there's plenty of evidence
2 of off-site impacts of other coal plant sites.

3 In summary, current standards for
4 regulation of coal ash ponds is inadequate, and
5 therefore I ask that EPA commence regulating coal
6 ash under Subtitle C of RCRA and commit to
7 protecting our groundwater and surface water
8 resources, and the health of our communities.

9 Thank you.

10 MR. BEHAN: Number 313.

11 MS. SCORANO: Hello. My name is Rachel
12 Scorano. I'm a student at Warren Wilson College
13 and a member of Asheville Rising Tide. And I'm
14 here today to say that I support coal ash
15 regulation under Subtitle C. Most of the
16 statistics have been said. I just wanted to come
17 in and let my voice be heard. After what happened
18 in Tennessee, I'm really afraid. There's a coal
19 ash pond right outside of Asheville that if it
20 breaks, could flow into the French Broad. And I'm
21 just here to say that I support Subtitle C. and
22 that -- Subtitle C, that's it.

1 MR. BEHAN: Thank you. Is the person
2 with number 66 in the room?

3 (No audible response.)

4 MR. BEHAN: 65, 67, 68?

5 (No audible response.)

6 MR. BEHAN: How about the person with
7 number 314 or 316? Please come forward.

8 SPEAKER: How about 315?

9 MR. BEHAN: 315 already spoke. Number
10 65, please.

11 MS. TOWNLEY: Hi, my name is Victoria
12 Townley and I come before you today as a private
13 citizen and a resident of Asheville, North
14 Carolina to speak about the danger of coal ash
15 ponds and their devastating effects on the
16 environment. Asheville, North Carolina is home to
17 two coal ash ponds at Progress Energy's Skyland
18 location. One of the ponds was used from 1962 to
19 1982 and is now inactive. However, the other is
20 currently in use and has a capacity of 450 million
21 gallons. Progress Energy's facility is one of 31
22 coal ash waste sites in 14 states leaking

1 pollutants into groundwater, according to the
2 Environmental Integrity Project and Earth Justice.

3 The EPA has rated the ash pond as poor,
4 meaning that there is a large potential for loss
5 of life if the dam were to fall -- mostly being
6 all of South Asheville. Research done by the
7 University of North Carolina at Asheville's
8 Environmental Quality Institute recently tested
9 the water and sediment from an unnamed tributary
10 on the French Broad River near Progress Energy's
11 facility. The water samples contained arsenic at
12 levels that far exceeded the legally permissible
13 limits for surface waters and were seven times
14 higher than the EPA's limit for drinking water.
15 The sediment sample showed even more alarming
16 levels of arsenic, 258 parts per million. That's
17 more than 15 times the probable effect level, or
18 the point at which a toxic element is known to
19 have a negative effect on living things, according
20 to the EPA.

21 Most U.S. soils only contain arsenic at
22 about 5 parts per million. As a resident of

1 Asheville's beautiful mountain community, have
2 spent many an afternoon kayaking, splish-splashing
3 in, floating on, walking by, or simply admiring
4 the 210 mile long river that flows directly
5 through the city. I am personally frightened to
6 know that I may have been exposed to the same
7 dangerous chemicals that are known to cause severe
8 deformities in fish, including growing two eyes on
9 one side of their heads, s-shaped spines, and
10 mutated organs.

11 Consequently, consumers of the fish, as
12 many Asheville recreational fisherman are, are
13 exposed to the same pollution. Toxins in coal ash
14 have been linked to organ disease, cancer,
15 respiratory illness, neurological damage, low
16 birth rates, tissue damage, and developmental
17 problems, including autism.

18 As a concerned citizen, I have read both
19 the proposed regulations and I believe that
20 Subtitle C is the strongest, most cost-effective
21 and safest option for residents living in an area
22 with a coal ash pond. Coal ash isn't only toxic

1 when a leach is found in the environment, and
2 should be regulated from cradle to grave. A
3 strong federal rule can ensure total compliance,
4 offsetting the initial cost with avoided health
5 and water clean up costs, prevent massive
6 disasters like the spill in Tennessee, and
7 increase safe coal ash recycling.

8 I urge you, for the safety of myself,
9 citizens of Asheville and citizens of coal ash
10 communities everywhere, to pass this important
11 measure. Thank you for your time and
12 consideration on this important issue.

13 MR. BEHAN: Thank you. Number 67.

14 MR. VENGOSH: Hello. My name is Avner
15 Vengosh, and I'm professor of chemistry and water
16 quality at Duke University and my testimony today
17 is based on the scientific research that my group
18 had been conducted since January 2009, a week
19 after the spill of the TVA ash in Kingston,
20 Tennessee. Research that we've been conducted
21 since the spill was funded only by Duke University
22 and NSF.

1 An 18-month survey of the water quality
2 in the Emory and Clinch River in the vicinity of
3 the 2008 TVA (inaudible) in Kingston has revealed
4 elevated levels of contaminants associated with
5 CCRs including arsenic, selenium, boron,
6 strontium, and barium in surface water, with
7 restrictive (inaudible) and also in coal water
8 that extracted from bottom sediments in the river.

9 Our study has shown that high
10 concentration of arsenic, up to 2000 ppb, exceeded
11 that we found in the coal water, and this high
12 concentration significantly exceed the MCL of 10
13 ppb and (inaudible) which is the ecological
14 threshold of 150 ppb. So we're talking about 2000
15 ppb level of arsenic.

16 So we also performed a leeching
17 experiment on the TVA ash and we found, as the
18 literature showed very extensively, similar
19 results showing the high mobility of contaminants
20 if the (inaudible) interaction with CCR with
21 water.

22 The impact of CCR on water resources,

1 however, is not restricted to a single accidental,
2 as over 500 power plants nationwide generate
3 approximately 130 million tons of CCR each year.
4 Only in North Carolina, about 1 billion gallons of
5 effluent coming from holding ponds is discharged
6 into the environment. This is equivalent to the
7 amount of drinking water in New York city of eight
8 million people every day.

9 We already started to investigate the
10 water quality in (inaudible) and we found alarming
11 evidence for the discharge of affecting the water
12 quality. The notion that CCR generate a direct
13 threat to the aquatic system through holding
14 ponds, landfill, and even beneficial use
15 (inaudible) what CCR could be (inaudible) interact
16 with ambient environment should become the
17 principal decision-making criteria for EPA, and
18 this committee in particular.

19 Water resources that are associate could
20 be impacted by CCR should be mandatory regulated
21 by the state and/or EPA with adequate (inaudible)
22 such as are relevant to the CCR, including metals

1 and metal (inaudible), like arsenic, selenium,
2 boron, and many others.

3 Thank you.

4 MR. BEHAN: Thank you. Number 68?

5 MR. MOON: Thank you, Mr. Chairman. Out
6 of all the comments we've had here today I thought
7 there were just two questions I would like to
8 focus on, and ask you to consider as the EPA
9 looking at this issue.

10 First is what's going to happen with the
11 old ash? If we could stop time like they did in
12 the Adam Sandler movie, we could just stop time,
13 there's still a lot of ash out there. If we're
14 not generating more it's still there. What's
15 going to happen with that old ash? How are we
16 going to accommodate that? What are we going to
17 do with that old ash? What are the opportunities
18 for utilization? What are the challenges for
19 utilization, other than just to take it and store
20 it somewhere? What can it be used for, with this
21 product?

22 The other question would be, what is the

1 rest of the world looking at? What's the rest of
2 the world doing about ash? What does the rest of
3 the world do with ash from the coal plants that
4 they have?

5 I was speaking at an international
6 conference in New Orleans in March of this year.
7 The subject was coal ash and it's use in cement
8 and cement products. I began to talk about the
9 anticipated regulations from the EPA that would be
10 proposed and since have come forward, and there
11 was much interest and much concern in the
12 international community about the potential for
13 anyone who consider coal ash hazardous to
14 categorize it as hazardous or just to claim it as
15 hazardous. I'm going to submit my comments that I
16 made at that conference, and would ask that you
17 all take a look at that. My name, I forgot to
18 tell you, is Steve Moon. I'm from Columbia, South
19 Carolina, and I'm here just to represent myself.
20 Thank you for your time.

21 MR. BEHAN: Thank you. 314 or 315?

22 MR. HARRIS: Hello, my name is Owen

1 Harris. I am a student at Warren Wilson in
2 Swannanoa, North Carolina. I'd just like to add
3 my voice to those in support of Subtitle C. Other
4 people have said it more expertly and more
5 technically than I can, but by the EPA's own
6 findings, coal ash is a toxic substance and right
7 now it's being stored as if it were benign. It
8 needs to be regulated adequately, to prevent
9 contamination. And between Subtitle C and D, it's
10 clear that the only one which guarantees safer
11 storage of this deadly material is Subtitle C.

12 Thank you.

13 MR. BEHAN: Thank you. We are running
14 about 15 to 20 minutes ahead of the scheduled time
15 and what I'm finding is some of the people in our
16 scheduled groups are not fully here, so what I'm
17 going to do right now is take a group of walk-ins
18 and some other numbers that were skipped this
19 morning.

20 Is 319, 320, 321, 322 and 323 here?
21 319, when you're ready?

22 MR. STEPHENS: Hi, my name is Parker

1 Stephens and I came from Boone, North Carolina
2 today. I work with Appalachian Voices, and I have
3 a degree in public health so to me there's really
4 nothing that should come before human health. And
5 right now, coal combustion waste disposal
6 practices are jeopardizing the health of North
7 Carolinians. In many cases these affected
8 individuals come from low income communities that
9 have very little say in the matter.

10 Coal ash contains heavy metals and known
11 carcinogens which have been identified in
12 groundwater surrounding coal ash mines. Clean
13 water is a basic human need and in no circumstance
14 should we allow it to be poisoned. By classifying
15 coal ash under Subtitle C and regulating it as a
16 hazardous waste the risks to human health can be
17 dramatically reduced.

18 I have a great amount of respect for the
19 EPA and the work the agency does to protect my own
20 health and safety, and I genuinely appreciate the
21 chance to offer up my opinions on this matter.
22 And I understand the financial implications the

1 new regulations may have and on the other impacts
2 of new regulations, but I urge you to consider the
3 health and environmental costs associated with
4 coal ash disposal. State and self-regulation may
5 be cheaper and it may be easier but we cannot
6 justify putting public health at risk. Please opt
7 for Subtitle C, stronger regulations on toxic coal
8 ash, and safer, healthier communities.

9 Thank you.

10 MR. BEHAN: Thank you. 320?

11 MS. OSTROFF: Hello, my name is Sheila
12 Ostroff, and I am here from (inaudible), North
13 Carolina. I have had the most amazing opportunity
14 to work with Appalachian voices and Watauga
15 Riverkeeper. And I've been introduced to a
16 subject called mountaintop removal, where over 50
17 percent of North Carolina, all of our energy is
18 coming directly from this. So this is not only
19 something that's going to continue to happen, but
20 with coal ash that's something that's always going
21 to be an issue, as long as we are doing this
22 mountaintop removal.

1 With that, I've also had another amazing
2 opportunity with Oxfam International Youth Project
3 where I've been able to develop my own program. I
4 have decided to educate our youth where their
5 food, water, and energy come from. These seem
6 like very, very, very basic concepts but I go into
7 schools every single day and ask children just
8 that question: Where does your food, water,
9 energy come from? I'm always horrified and kind
10 of shocked when I hear "grocery store," "faucets,"
11 "bottles" and "a light switch," or "an energy
12 plant."

13 We are very disconnected as a human race
14 to where our central resources are coming from,
15 and I think that's a huge problem in and of
16 itself. The fact that it's a basic right as well
17 as a necessity for water to be available to us as
18 individuals, I think that that's a main issue and
19 we need to focus on making this possible; not only
20 to ensure for the safety of ourselves, but also
21 future generations.

22 So thank you very much for listening to

1 me. I think that Subtitle C is the only way to
2 make this happen. Thank you very much.

3 MR. BEHAN: Thank you. 321?

4 MR. WHITSON: Good day, and thanks for
5 having this hearing here. My name is David
6 Whitson and I speak only for myself. I'm a member
7 of the Carpenters Union. I've just moved here
8 from Sacramento, local 46, in California. I now
9 reside in Charlotte with my fiancée. I've looked
10 into the employment opportunities here. They seem
11 to be 90 percent or more in nuclear power or coal
12 power production, for union carpenters anyway. So
13 I was concerned. I saw this hearing was taking
14 place and wanted to come over here. I'll be
15 speaking off the cuff; I signed up when I got
16 here. I briefly looked at Wikipedia, with all the
17 pitfalls of that source of information, but it
18 stated that potentially toxic trace elements in
19 coal include arsenic, beryllium, cadmium, barium,
20 chromium, copper, lead, mercury, molybdenum,
21 nickel, radium, selenium, thorium, uranium,
22 vanadium, and zinc at 10 times the concentration

1 in the original coal when it's in these
2 byproducts.

3 I found Jeff Goodall's article from
4 Rolling Stone, "Coal's Toxic Sludge." During the
5 Clinton era EPA took a hard look at coal ash. He
6 states in March 2000 they concluded that the waste
7 can and do pose significant risks to human health
8 and the environment when not properly managed. I
9 don't think many people from East Tennessee would
10 come in here and say these products, as they were
11 called, this toxic waste has been appropriately
12 managed or handled.

13 The other speakers, I made some notes.
14 You've already heard these if you were here, so
15 pardon the repetition, but it's been stated that
16 no hazardous waste sites exist in North Carolina.
17 It would place a burden upon the industry. There
18 would be changes. There would be increasing
19 production cost and construction. I've heard the
20 ironic name of Progress Energy. There would be
21 excess cost. There would be burdensome
22 regulations. They would be unfairly stigmatized.

1 It would be stringent and costly. There should be
2 beneficial use and disposal of this product. I'm
3 kind of shocked to hear toxic waste termed a
4 product, but I suppose in the world when depleted
5 uranium can be used in bullets and bombs and
6 destroy the soul and future generations in
7 countries that we are introducing to democracy, I
8 suppose the same logic applies.

9 As I have 30 seconds left I would just
10 say that in the interest of fair and balanced
11 discussion of this topic, I was kind of surprised
12 that Duke Power did not announce their profits.
13 They've only complained about their potential
14 costs. As a working carpenter -- not to brag, I
15 worked eight weeks in the last two and a half
16 years. I last worked on a hospital in southern
17 Sacramento, south side of Sac. Other than that
18 I've worked in power plants almost exclusively. I
19 just want to say in conclusion, I don't care if I
20 don't work again, you know, if we destroy this
21 planet so I can have a job. I won't put a dollar
22 price on the health of this planet, or our future

1 generations.

2 Thank you.

3 MR. BEHAN: Thank you. Number 322.

4 MR. MCDOWELL: My name is Pete McDowell.

5 I'm from NC1 and I'm here to speak in support of
6 Subtitle C.

7 Climate change is real. Climate change
8 brings stronger hurricanes, more and more intense
9 floods. Coal plants and coal ash ponds are
10 largely on rivers. Drinking supplies, our
11 drinking supplies often come from rivers. Those
12 coal ash ponds will flood out with those floods
13 and those hurricanes. It will happen with the
14 increase due to climate change. The Toxics in the
15 coal ash ponds will wash down the rivers. We will
16 drink those tonics.

17 I support Subtitle C. It's the only
18 logical way to go. Thank you.

19 MR. BEHAN: Thank you. Is number 323
20 here?

21 (No audible response.)

22 MR. BEHAN: Could numbers 69, 70, 71 --

1 is 72 here?

2 (No audible response.)

3 MR. BEHAN: 72 is not here. How about
4 113?

5 (No audible response.)

6 MR. BEHAN: Number 129? Number 69, if
7 you would come to the podium, please.

8 MS. HICKS: Good afternoon. My name is
9 Katie Hicks and I work with Clean Water for North
10 Carolina. We are a statewide organization
11 focusing on protecting the drinking water and
12 environmental health of rural and low-income
13 communities and communities of color. We have
14 offices in Asheville and Durham, and hundreds of
15 members statewide.

16 The failure to regulate coal ash waste
17 is yet another way in which the health and
18 environmental costs of coal are being passed on to
19 the public, while profits from sales of electric
20 power are privatized to investors. Although
21 regulating coal ash under Subtitle C will raise
22 certain costs, these are marginal compared to the

1 value of our resources which are currently at
2 risk. At Clean Water for North Carolina, we have
3 a special concern with coal ash waste's threat to
4 groundwater, as it is a source of drinking water
5 for over 50 percent of North Carolina residents,
6 including those served by public water systems
7 that use groundwater as a source.

8 More than 2.5 million North Carolinians
9 depend on their own private wells, which are not
10 being tested for the contaminants most likely to
11 come from unlined, under-monitored coal ash dumps.
12 We're acutely aware that as more data accumulates,
13 there are more and more instances of documented
14 contamination of groundwater, which pose an
15 unacceptable threat to the health and well-being
16 of North Carolinians.

17 Our organization knows of communities
18 living very close to coal ash ponds in this state,
19 such as the neighborhood just behind the pond at
20 Duke Energy's Buck Steam Station. The whole
21 approach of regulating within a compliance
22 boundary is based on the assumption that land

1 ownership and uses will change little over time
2 and that groundwater won't move significantly;
3 both completely unrealistic. We know that
4 groundwater moves, and in unexpected ways. On
5 behalf of the groundwater users and marginalized
6 communities we work to protect, Clean Water for
7 North Carolina supports regulation of coal ash
8 waste under Subtitle C. EPA's first proposal is a
9 step in the right direction.

10 I'd like to close on a personal note.
11 I'm a resident of Asheville, North Carolina, home
12 of Progress Energy's plant with one of the twelve
13 high-risk impoundments in the state, and have met
14 some folks that live in the shadow of that pond,
15 so I personally understand the dangers associated
16 with failure of coal ash dams. I look at what
17 happened in Tennessee in 2008 and see an eerie
18 picture of what the future could look for my
19 community if EPA fails to enact stronger
20 regulations.

21 Thank you.

22 MR. BEHAN: Thank you.

1 MS. HARRISON: Okay. I'm Tracy
2 Harrison. I'm a member of the North Carolina
3 House, serving in my third term representing
4 Greensboro. And I'm not going to repeat all that
5 you all have heard about the environmental issues
6 associated and public health issues associated
7 with coal ash but I would like to talk about my
8 extraordinary frustration with getting regulation
9 done at the state level here in North Carolina,
10 and why we need Federal leadership on this.

11 It was pretty troubling for me to find
12 out how ubiquitous coal ash is used in North
13 Carolina, in structural fill on construction
14 sites, on the roads to melt snow and ice and it
15 goes virtually unregulated, unmonitored,
16 unenforced, unreported. So I have been working
17 for three years to introduce legislation at the
18 state level to bring in some new practices and
19 provide better oversight, and I feel stymied in
20 efforts by the coal ash producers who would prefer
21 Federal regulation -- at the federal level, but I
22 believe -- Subtitle D, is treating it as regular

1 household waste, and I contend to you all that
2 it's much too toxic to be used, to be regulated as
3 regular household waste.

4 And it's pretty clear that the states,
5 when I was looking for legislation, model
6 legislation, around the country to model a North
7 Carolina bill, I couldn't find one. So it's my
8 feeling that there's not adequate regulation of
9 coal ash anywhere in any state. So we really need
10 federal regulation and we need federal regulation
11 under Subtitle C.

12 And I appreciate your considering in
13 those forums. Thanks.

14 MR. BEHAN: Thank you. Number 71?

15 MR. WILSON: My name is Darrell Wilson.
16 I've been a marketer of fly ash for the past 28
17 years. I strongly oppose the EPA regulating fly
18 ash under Subtitle C because there is no science
19 to justify such a designation. A Subtitle C
20 designation for fly ash would definitely hinder
21 the recycling efforts that many of us have worked
22 so hard on for many years. The idea that a

1 hazardous label would increase the recycling
2 efforts is absolutely untrue and I have been told
3 by many customers and engineering firms that a
4 hazardous designation for fly ash would result in
5 them ceasing to use and specify fly ash for fear
6 of litigation.

7 I recently became aware of the August 9,
8 2010 Congressional Research Service report,
9 "Regulating Coal Combustion Waste Disposal:
10 Issues for Congress." In this report they
11 recommend Congress amend the Resource Conservation
12 and Recovery Act to create a new Subtitle K that
13 would specifically address issues unique to the
14 management of coal combustion waste. This appears
15 to me to be the most sensible approach. I think
16 everyone here would agree that insuring safe
17 disposal of coal ash should be and is what
18 everyone wants. How we achieve that is what is
19 important. To label fly ash as a hazardous
20 product gives the EPA the right to regulate
21 disposal but at a cost that is much too high to
22 everyone involved. Regulation under Subtitle C

1 will result in significant increases in the cost
2 of electric power created using coal as a fuel
3 source.

4 Since we won't be getting rid of
5 coal-powered power plants anytime soon, we should
6 concentrate on making it as safe as possible and
7 also making sure we continue to utilize the
8 resulting coal ash residue in as many recycling
9 efforts as possible. A Subtitle C designation
10 will not help achieve these goals. Work with
11 Congress to correct RCRA, to do what is right for
12 everyone. Thank you.

13 MR. BEHAN: Thank you. Is number 72
14 here? 113?

15 MS. ILLYN: My name is Alexis Illyn with
16 Restoring Eden. We are a national ministry that
17 encourages Christians to love, serve, and protect
18 God's creation and everyone who depends on it. As
19 a follower of Christ I am here today out of
20 concern for the communities across the nation who
21 are being contaminated by toxic coal ash. I am
22 deeply encouraged that the EPA is taking this

1 issue seriously and has invited all of us to
2 comment.

3 God called the balance of nature good.

4 In Micah 6:8 when we encounter what God has called
5 good, we are called to respond by loving kindness,
6 doing justice, and walking humbly with God. This
7 fundamental call to do justice applies not only to
8 our love for our neighbor, but also applies to our
9 biblical call to care for God's creation. As
10 faithful people, we strive to live in a way so
11 that our daily lives and our actions and choices
12 reflect our values and ethics. Values and ethics
13 form the cornerstone of good leadership and good
14 leadership should in turn lead to the betterment
15 of all members of society.

16 Unfortunately, as a society we have
17 failed with regards to how we store coal ash. The
18 current system of dumping ash is not acceptable.
19 Coal ash is damaging God's good creation and the
20 health and livelihood of our neighbors.
21 Communities, especially children, living near the
22 585 known disposal sites across the nation, are

1 facing an increased risk of cancer, learning
2 disabilities, birth defects and other illnesses
3 due to heavy metals such as arsenic, lead and
4 mercury that are seeping into the water.

5 Yet for decades there has been no
6 national regulations and little to no state
7 regulations around this. This needs to change.
8 The coal industry and individual coal-fired power
9 plants have the means to properly dispose of this
10 toxic by-product. Expecting the coal industry to
11 be a good neighbor, one that does no harm to
12 fellow neighbors, is not outrageous but simply is
13 a reasonable cost of doing business. Making a
14 profit is fine, but causing others to suffer and
15 bear the harmful cost as a result is wrong. It is
16 injustice and it is profiteering.

17 Unregulated coal ash sites are a
18 national problem and a national solution is
19 needed. Federally enforceable safeguards are the
20 only way to guarantee that the public will be safe
21 from the dangers of toxic coal ash. We know coal
22 ash is toxic. We know it is poisoning families,

1 communities and our environment, and it's time
2 that it be treated as the hazardous waste that it
3 is. So I strongly urge you to adopt the Subtitle
4 C proposal for coal ash regulation.

5 MR. BEHAN: Thank you. Number 72.

6 MS. GOFF: Good afternoon, ladies and
7 gentlemen of the EPA panel. My name is Ellen Goff
8 of Lake Wylie, South Carolina. I wish to express
9 my profound gratitude for the agency's selection
10 of Charlotte as one of the public hearing
11 locations, to give you a first-hand look at our
12 magnificent Catawba River basin, and the coal
13 combustion residuals floating perilously next to
14 this vital waterway. I also appreciate the
15 Herculean effort required on your part to give the
16 public an opportunity to make their voices heard.

17 By this evening you will have heard from
18 many experts and scientists, businesspeople and
19 special interests on the toxicity or relative
20 harmlessness of CCRs. My viewpoint is personal.
21 I live on Lake Wylie. I drink the water that
22 originates from the Catawba River and I head up a

1 group of volunteers who work to protect the
2 quality and quantity of our water.

3 As the Lake Wylie lake keeper for the
4 Catawba Riverkeeper Foundation I give voice to the
5 conditions on our lake that impact water quality,
6 that impact the local environment, and compromise
7 human health. Now the EPA must fulfill its role
8 and protect the environment, our environment, from
9 the toxic discharges that are filling and killing
10 our local waterways; waterways not owned by a
11 major energy producer, by an industry, state or
12 Federal government or political party, but owned
13 by the people and held in trust and managed for
14 the people.

15 The EPA has the benefit of prior
16 knowledge regarding the dangers of CCR pond
17 failure, leaking landfills and contaminated ground
18 and surface waters. We have witnessed the
19 tragedies in Tennessee. We now know too much not
20 to act. We see the disastrous effects of CCR pond
21 failure and as sincere as coal plant operators may
22 be in managing their sites, we cannot chance

1 another failure. Not here, not now, and not in
2 the future.

3 There is no fix for a catastrophic
4 failure, no remedy, no do-over that will restore
5 our public waterway after such an event. The coal
6 plant operators may say that huge cost issues are
7 to blame if they challenge the handling of CCRs.
8 Don't let their protests and objections cloud the
9 issue. This is not a shared responsibility. It
10 is theirs to manage safely while protecting the
11 environment and protecting the public. I hope you
12 will find at the conclusion of all these hearings
13 that you know and have evidence of the harmful
14 toxic discharges from CCRs is clear and evident.
15 It is now time to set strong federally enforceable
16 safeguards to protect the public and the public
17 waterways. The time for the EPA to act is now.

18 MR. BEHAN: The persons with numbers 73,
19 74, 75, 76, and 174, please come forward. Number
20 73, when you're ready, ma'am.

21 MS. GELLICI: Thank you. The beneficial
22 use of coal ash contributes \$6-\$11 billion to the

1 U.S. economy on an annual basis. Designating coal
2 ash as a hazardous waste will jeopardize up to \$11
3 billion of economic value for our nation each
4 year.

5 My name is Janet Gellici. I'm Chief
6 Executive Officer of the American Coal Council.
7 The ACC is a trade association representing over
8 160 companies involved in the coal industry. Many
9 of our member companies are actively engaged in
10 beneficially recycling coal ash.

11 In 2005 our organization conducted the
12 first ever assessment of the economic value of
13 beneficial coal ash use. That study identified
14 total economic benefits of \$4.5 billion annually.
15 Since the 2005 report was published, beneficial
16 use of coal ash has increased significantly. The
17 ACC updated its economic assessment in January of
18 this year. We found that the use of coal ash now
19 contributes \$6-\$11 billion in annual economic
20 benefit for the U.S. economy. These benefits
21 include revenues from the sale of coal ash for
22 beneficial use, avoided cost of disposal, and

1 savings from use as sustainable building
2 materials.

3 The ACC study also identified
4 significant environmental advantages associated
5 with beneficial use of coal ash. We found annual
6 reductions in energy consumption equivalent to the
7 energy consumed by 1.7 million homes. We found
8 water savings equal to 31 percent of California's
9 annual domestic water use.

10 We found annual greenhouse gas emissions
11 reductions comparable to removing 2 million cars
12 from the road. The American Coal Council supports
13 the increased beneficial use of coal ash is a
14 non-hazardous product. The ACC opposes EPA's
15 proposal to reverse previous determinations that
16 correctly concluded coal ash should not be
17 regulated as a hazardous waste. A hazardous
18 designation under Subtitle C will stigmatize the
19 beneficial use of coal ash and seriously damage
20 our ability to recycle this product. A hazardous
21 designation will increase the volume of landfill
22 products. A hazardous designation will require

1 the use of products that increase greenhouse gas
2 emissions. And a hazardous designation will
3 negatively impact the US economy by up to \$11
4 billion each year. That's \$11 billion each year.

5 Coal ash disposal regulations should be
6 enacted under Subtitle D and EPA should work to
7 promote beneficial coal use recycling as a benefit
8 for our environment and the economy. Thank you.

9 MR. BEHAN: Number 74?

10 MR. STORM: Good afternoon. My name is
11 Richard Storm. I'm from Albemarle, North Carolina
12 and I'm here as an experienced, registered
13 professional engineer with 40 years of experience
14 in power generation. Except I'm not speaking here
15 on behalf of the power generation business. I'm
16 here as a grandfather. I'm worried about
17 America's future.

18 Increased environment regulations are
19 strangling America's industry and are a large
20 contributing factor to the recession,
21 unemployment, and the driving of American
22 manufacturing overseas. My concern for America is

1 that the radical environmental movement has made
2 the war on coal to be politically correct. We
3 hear much in the media and the special interest
4 groups that coal should be made so expensive that
5 only natural gas, wind, and solar power will be
6 used.

7 The consequences of the war on coal by
8 the EPA and the politically-correct news media is
9 working toward the weakening of America, America's
10 industrial strength, our economy, and our position
11 of dominance as a manufacturer in the world. As
12 regulations are increased, the consequences are
13 increased: Unemployment, reduced economic
14 prosperity, and further loss of jobs.

15 America's industry and infrastructure
16 was built in the last 100 years using coal as the
17 largest source of electric power generation, and
18 still is. America gained our world position on
19 industrial production and technological leadership
20 powered from this national treasure of coal.
21 America still needs coal. Over 23 percent of
22 America's energy is provided by coal and about 50

1 percent of our electricity. As America moves
2 toward plug-in electric vehicles, we have an
3 opportunity to reduce our dependence on foreign
4 oil supplies by using clean coal-based electricity
5 from America's own home-grown energy, coal.

6 Few people have been harmed by coal ash
7 and many of us older adults remember the furnaces
8 in our basement, and taking the ashes out to grow
9 rosebushes and vegetables. Thank you for this
10 opportunity to comment, and I hope you will be
11 reasonable.

12 MR. BEHAN: Thank you. Number 75.

13 MR. BOGGS: Thank you for hearing us
14 today. Balance, it's all about balance. If we
15 were to take ash off the market, if we were to
16 eliminate it by some means, and all the beneficial
17 uses it has, something has to take his place.

18 My name is Bruce Boggs. I'm a
19 conservation chemist. I learned it by marriage,
20 by education, and by experience. My
21 mother-in-law, when she used a napkin for a meal,
22 proceeded immediately thereafter to use it to

1 clean the table if necessary, and then threw it in
2 the fireplace for fuel. She spiraled down the use
3 of the material.

4 A little over 20 years ago in
5 Cincinnati, I spoke at a public hearing at the
6 initiation of the Resource Conservation and
7 Recovery Act. I believe in resource conservation,
8 recovery and utilization. You cannot however
9 create a vacuum. Nature abhors a vacuum. You
10 know that. We can't live without having a carbon
11 footprint of some sort. So if in fact we
12 stigmatize, remove the beneficial uses of fly ash
13 from their appropriate applications, there is
14 going to be a vacuum created. That vacuum has to
15 be filled by something and it may be from a
16 quarry. Quarries have a finite life. They
17 dissipate and then you have the issue of
18 trade-offs with quarries versus potential resource
19 conservation and recovery act; the very thing
20 intended by that initial legislation.

21 I would be foolish to advocate that any
22 of these applications or utilization areas would

1 harm the environment. I wouldn't believe in that.
2 I've never practiced it. Over 25 years I've been
3 developing applications for coal byproducts and
4 other mineral byproducts that create a beneficial
5 use without environmental damage.

6 And that can be done. You don't have to
7 have either/or. You can have your cake and eat it
8 too in this case. But only with appropriate
9 regulations done in a manner that does not damage
10 the application. So I would encourage EPA to take
11 a position with D Prime, strictly controlled.
12 Manage the states. Implement regulation of the
13 resource and implement the spirit and intent of
14 the Resource Conservation and Recovery Act.

15 Thank you.

16 MR. BEHAN: Thank you. Number 76.

17 MR. ARENT: Good afternoon. My name is
18 William Arent and I'm the executive vice president
19 of Carolina's Ready Mixed Concrete Association.
20 I'm also a registered professional engineer.

21 It has literally taken decades for fly
22 ash to gain the wide acceptance it now enjoys with

1 specifiers and concrete producers. Incorporating
2 fly ash in a concrete mixture provides many
3 benefits. The durability of concrete can be
4 improved and service life extended by using fly
5 ash. Fly ash can lower concrete permeability and
6 thus reduce the rate of ingress of water and
7 aggressive chemicals. Fly ash is used to resist
8 deleterious alkali aggregate reactions and sulfate
9 reactions in concrete. Fly ash increases the
10 compressive strength of concrete. Fly ash reduces
11 the heat of hydration in mass concrete. Fly ash
12 is recognized in the U.S. Green Building Council's
13 LEED system as a postindustrial recycled material.
14 Fly ash reduces the cement content of concrete and
15 thus the CO2 generated in the manufacture of
16 cement.

17 The Carolinas Ready Mixed Concrete
18 Association urges the EPA to consider the
19 technical and sustainability implications of
20 classifying fly ash as a hazardous waste under
21 Subtitle C of RCRA. Designating fly ash as a
22 hazardous waste will result in little or no fly

1 ash being used in concrete in the United States.
2 The concrete industry will no longer specify its
3 use due to the stigma of this designation.

4 The EPA's alternate proposal, Subtitle D
5 option, is just as protective of the environment
6 as Subtitle C option but without the pejorative
7 stigma denoted by the hazardous label. Subtitle D
8 option is not less stringent. The Subtitle D
9 Option can be implemented much more quickly. If
10 the EPA wants the federal enforcement of fly ash
11 disposal regulations, EPA should petition Congress
12 to give them that authority as a special waste
13 under Subtitle D, not as a special waste under
14 Subtitle C.

15 Thank you.

16 MR. BEHAN: Thank you. Number 74?

17 MR. ROBERTSON: Good afternoon. My name
18 is Tom Robertson. I work for Environmental
19 Quality Management. We are a consulting and
20 engineering firm with offices throughout the
21 United States.

22 I spend most of my time on cement plants

1 and hazardous waste incineration facilities. I'm
2 an air pollution control guy. I've spent my
3 entire career scrubbing pollutants and particulate
4 out of the discharges, and then safely managing
5 them once they're on the ground.

6 I would like to suggest that if the
7 anger I seem to hear in the room is for dam and
8 dike failure, then we are using the wrong statute
9 to go after dam and dike failures. The Clean
10 Water Act is what regulates discharges of water,
11 and what regulates dredging and diking, not RCRA.
12 I would suggest that appropriate regulatory
13 management, where we have appropriate design
14 standards with appropriate design engineers
15 working on it -- you know, the Tennessee failure
16 was an engineering failure. It was not a
17 regulatory failure.

18 And with that, I would like to suggest
19 the Subtitle D regulation, with appropriate design
20 standards, enforcement and implementation would be
21 the most appropriate response for this agency to
22 take.

1 Thank you.

2 MR. BEHAN: Thank you. Numbers 77, 79,
3 80. How about 149, 324, 335? Let the record
4 reflect that Suzanne Rudzinski has left the panel,
5 to be replaced by Rob Stachowiak of the US EPA
6 office of General Counsel.

7 Ma'am, when you're ready?

8 MS. KLESZY: My name is Nancy Kleszy. I
9 come from Boone, North Carolina. I'm very close
10 to where the mountaintop removal is going on. It
11 makes me very angry as a private citizen, as a
12 mother, grandmother and great-grandmother to
13 imagine that we are knowingly poisoning ourselves.
14 We know we are doing it. The evidence is
15 overwhelming, and yet we keep on doing it. What
16 are we trying to do? We are producing birth
17 defects in children with -- I had a grandson with
18 severe autism. We are producing all these
19 terrible things because we don't stop the
20 poisoning. It can be done. It's not impossible.

21 I really think -- I really think that we
22 should be stopping being so selfish and worrying

1 about our bottom line all the time and start
2 thinking about the people. Everything is supposed
3 to be for the benefit of the people, isn't it?
4 Well, it's not, and it should be.

5 And so I'm asking that the Environmental
6 Protection Agency -- which is to protect the
7 environment -- will start doing that in this
8 particular case and will get the authority to do
9 that, and we will stop poisoning our kids.

10 MR. BEHAN: Thank you. Will 324 come
11 up?

12 MR. RICHARDSON: I'm Bill Richardson,
13 co- founder and managing member of Precision
14 Recycling Industries located nearby Cornelius,
15 North Carolina.

16 PRI produces and markets a safe,
17 nontoxic open-air abrasive media that is an
18 alternative to the use of coal slag and copper
19 slag, which are currently the most widely used
20 open-air abrasives in the country. PRI is part of
21 an emerging green industry creating green jobs and
22 diverting thousands of tons of recyclable glass

1 from landfills converting this into a safe,
2 economically, viable, expendable, open-air
3 abrasive media that is not harmful to the
4 environment. Unlike foundry slag, a recycled
5 glass media does not contain any of the many
6 toxins commonly known to be present in coal and
7 copper slags. When foundry slags are blasted
8 under high pressure against metal to remove rust
9 and paint, this resulting micronized dust
10 containing lead, arsenic and other toxic chemicals
11 are substances that are released into the
12 environment, contaminating nearby land and
13 waterways.

14 Additionally, under current regulations,
15 any of the contaminated dusts that's recovered is
16 sent to unlined landfills where there is a great
17 risk to major groundwater contamination.

18 The slag industry would have you believe
19 that the dust created by the use of foundry slag
20 abrasives is not harmful. This is simply not the
21 case. Many numerous studies by the EPA and
22 industry itself show that fact.

1 The slag industry also states there are
2 no viable alternatives to the use of foundry slag
3 abrasives. I stand here in testimony that that is
4 not the case. The truth is that unregulated use
5 of foundry slags as an open-air abrasive is
6 harmful to the environment. It's a hazard to the
7 workers and a source of contamination to our land
8 and workplace. The truth is that the emerging
9 recycled glass media industry is already supplying
10 thousands of tons of recycled glass media to the
11 market from Norfolk to Seattle.

12 Birth and growth of our industry has
13 been in a direct response to the need for a safe,
14 economically friendly replacement for foundry
15 slags in the open-air abrasive market.

16 Our industry applauds the EPA proposal
17 to regulate the use of disposal CCRs including
18 foundry slags and the removal of their beneficial
19 use designation as an open-air abrasive.

20 MR. BEHAN: Thank you. 325. Sir, what
21 number do you have?

22 MR. SERTA: 80.

1 MR. BEHAN: 80? Number 80.

2 MR. SERTA: My family has been involved
3 with boiler slag -- we call it also coal slag --
4 for over 40 years. I started bagging it when I
5 was 20, so I've got about 20 years of breathing
6 and eating this stuff. And I can tell you it's
7 inert. EPA has already ruled four times that it
8 was not a hazardous product.

9 I understand responding to the Kingston,
10 Tennessee spill because it was such a mess; it was
11 everywhere. And I'm the biggest fishermen of
12 anybody, and I can't stand to see a mess like this
13 in the rivers where we all like to fish. But you
14 spill a billion gallons of any of our other
15 alternatives out there, like garnet, steel shot,
16 copper slag, nickel slag; I can see everybody else
17 wanting to jump on the bandwagon and call that
18 hazardous as well.

19 I've got a chemical analysis here that
20 says, you know, this product here is not reactive,
21 it's not corrosive, it's not ignitable and it's
22 not toxic. It's environmentally benign, and

1 because it is so, almost 100 percent of it is
2 recycled. 80 percent of residential shingles in
3 the United States contain boiler slag.

4 So if you classify it as a Subtitle C
5 hazardous waste, I see two things happening. One
6 is, some of the power plants are just going to
7 say, well, we're going to landfill all of it;
8 we're not going to take the chance of getting
9 sued. So they are going to pay the higher rate to
10 put it in a hazardous landfill and then they are
11 going to jack our rates up so they pass on the
12 costs. Then, two, you know, the cost -- what does
13 get recycled, the cost of roofing your house with
14 asphalt shingles will go up, plus the cost to
15 insure it by 20 to 30 percent, so we're told by
16 our insurance agents.

17 I know we need to get off coal and we
18 need to get off oil addiction and we need to move
19 to solar. We have natural gas. But let's not
20 move -- let's not destroy the industries that are
21 still warming our houses and powering our cars
22 until we have a plan in place.

1 We should jump at the opportunity to
2 recycle, and that's what we are doing here. We
3 are recycling this product. And I think that
4 we've been doing it for over 40 years. Let's
5 continue recycling and not landfill this stuff.

6 Thank you.

7 MR. BEHAN: Sir? Sir? I may have
8 missed it at the beginning, but could you state
9 your name and affiliation for the record?

10 MR. SERTA: Matt Serta with Mobile
11 Abrasives.

12 MR. BEHAN: Thank you. Numbers 82, 83,
13 84, 129 and 163. Could number 82 come to the
14 podium, please? Is number 82 here?

15 (No audible response)

16 MR. BEHAN: 83, please.

17 MS. DILLEN: Good afternoon. My name is
18 Abigail Dillen. I'm an attorney with Earthjustice
19 and I coordinate our coal work around the country.
20 I want to thank you for being here today. It
21 matters tremendously to me, and I thank everybody
22 in the room to be heard by you.

1 Over the past year, my colleagues and I
2 have researched the State regulations, such as
3 they are, that are currently on the books to guard
4 against water pollution from coal ash. We have
5 documented extensive damage from coal ash around
6 the country. And the picture that we see is a
7 wholesale regulatory failure, and that failure is
8 leaving us with a national legacy of
9 contamination.

10 Given the history here, the claim that
11 EPA can leave regulations to the state simply is
12 incredible, and we will be making that case in
13 detail to you in written comments.

14 But since we are in Charlotte, let's
15 talk about North Carolina, which is a perfect
16 example. There are more high-hazard dams here
17 than in any other state in the country, but there
18 are no regulations that apply to coal ash ponds
19 and surface impoundments. That means no
20 engineering and safety requirements, no required
21 groundwater monitoring, no financial assurances,
22 and no post-closure requirements for the many

1 aging facilities that will soon have to retire.
2 And you've heard of that from somebody living near
3 the Riverbend plant here today what happened to
4 that ash pond. There is simply no regulations in
5 place to ensure that it will be closely -- or
6 safely closed and monitored.

7 North Carolina should know better.
8 Going back to the 1970s, regulators knew that
9 selenium from coal ash was poisoning Belews Lake,
10 eventually killing off 16 of its 20 resident fish
11 species. This is just one of several known damage
12 cases in this state, yet there has never been a
13 real attempt to get a handle on the coal ash
14 problem. And let's be clear, North Carolina is
15 not an outlier.

16 I'm going to end with a brief story
17 about Pennsylvania, which supposedly has the most
18 progressive coal ash regulation in the country. A
19 couple of months ago, I was in the town of La
20 Belle, and the highest point in La Belle is the
21 coal ash ridge that surrounds a big ash -- it's a
22 little bit bigger than a pond; it looks more like

1 an ash lake. And when it rains, storm water flows
2 down through the ash flooding the back yards and
3 the basements of the people who live below it.
4 When the wind blows, they look up and they say
5 they see a gray Sahara of ash blowing around. It
6 blows under their windowsills, it blows into their
7 barbeques, into their garages, into their cars.

8 Of 40 people I met at a town hall
9 meeting, ten were suffering from cancer, and they
10 all lived in the same cul-de-sac under the ash
11 dump. These are people who do not have the means
12 to pick up and move. They are trapped. And they
13 are asking me, why aren't their rules against
14 this?

15 On their behalf, I implore you to make
16 those rules under Subsection C.

17 MR. BEHAN: Thank you. Number 84.

18 MS. ALLISON: I'm Nancy Ellett Allison,
19 the pastor of Holy Covenant United Church of
20 Christ, and this is Debbie Davis, an Elder from
21 Holy Covenant.

22 We have come to thank the EPA for

1 holding these hearings, and challenge this agency
2 to find the courage to live up to their high
3 calling of protecting the environment.

4 Each year in the Christian calendar we
5 observe a day of repentance known as Ash
6 Wednesday. It is our day of contrition when we
7 smear the ashes of remembrance on our foreheads or
8 our hands for all to see. It is a public
9 admission of guilt, a public statement of sorrow,
10 complicity, and repentance. We mark the forehead
11 saying, "Remember that you are dust, and to dust
12 you shall return, yet out of death comes new
13 life."

14 We mark the forehead saying, "Remember
15 that you are dust, and to dust you shall return,
16 yet out of death, comes new life." We would
17 invite any others who wish to receive ashes to
18 come forward at this time.

19 We have squandered God's legacy of grace
20 and abundance. We have abused God's creation for
21 the sake of personal profit. Each Wednesday, with
22 the Psalmist, we cry out: "Have mercy on me, oh,

1 God, blot out my offenses. Wash me through and
2 through from my wickedness and cleanse me from my
3 sin against you, oh living God, and you alone,
4 have I sinned and done what is evil in your sight.
5 Your judgment is what I deserve, for you desire
6 truth in my inward being."

7 The truth of our coal consumption, that
8 it is a costly fuel. It costs us mountaintops to
9 remove it cheaply. It costs us clean air when we
10 burn it freely. It costs us wetlands, clean water
11 and contaminated soil to discard it randomly. It
12 costs us our integrity to yield to the coal and
13 energy industry in considering these alternate
14 regulations.

15 They will argue that it saves each
16 consumer money for their industries to avoid
17 mandatory regulation. It is time to deal
18 truthfully with the full costs of our coal
19 consumption. Only as the government quits
20 subsidizing and yielding to the lobbying of the
21 coal industry will the true costs of coal be known
22 and will we find the collective courage and will

1 to turn to alternative sources of energy.

2 God desires, God demands truth from all
3 God's children. Your work as an Environmental
4 Protection Agency is to be faithful to the land
5 you serve and protect, not to the industries and
6 their deceptions. May new life rise from the
7 ashes of our repentance today.

8 SPEAKER: Amen.

9 MR. BEHAN: Next.

10 MS. MacDOUGAL: Hello. My name is Fern
11 MacDougal.

12 I support the implementation of Subtitle
13 C option. There has been a lot of talk of money
14 at this hearing on the industry's part. They are
15 not willing to be held accountable for violations
16 by Federally enforceable regulations. They also
17 say it costs too much to monitor the groundwater,
18 install liners where CCRs are being dumped or
19 create water runoff or dust controls. And I just
20 want to remind you that the cost isn't going to go
21 away. What the industry does not pay in
22 regulations, we will all pay in damage to our

1 health and to our environment.

2 Seems to me that if the coal industry
3 isn't willing to pay for even the small fraction
4 of the cost of burning coal, then maybe it's time
5 to move on to a new form of energy; one that
6 doesn't tear down our mountains, leach into our
7 water and poison our air.

8 Thank you.

9 MR. BEHAN: Thank you. Is there anyone
10 in the room that has a number less than 80 that
11 has not spoken?

12 (No audible response.)

13 MR. BEHAN: Number 85, number 88, number
14 86 and 87 -- if you've shown up recently -- number
15 131, number 160 and number 185. Number 85, if you
16 can come to the podium.

17 MR. DUDDING: My name is Carl Dudding,
18 and I am a civil/solid waste engineer and a
19 small-business owner from Glen Allen, Virginia.
20 Thank you for the opportunity to speak here today.

21 And regulation under Subtitle C, in my
22 opinion, will severely impact my firm's ability to

1 beneficially use significant amount of CCRs, as I
2 will describe in a moment.

3 I'm opposed to the management of CCRs as
4 a Subtitle C material and strongly support
5 management under Subtitle D. To the best of my
6 knowledge, CCRs are the largest, single
7 recycling/reuse success story in the United
8 States. They are a useful construction material
9 with uniform physical characteristics, and a
10 Subtitle C designation will significantly
11 jeopardize this ongoing success story.

12 In my opinion, the stigma that will be
13 created will prevent continued high usage rates of
14 CCRs and is currently preventing development of
15 innovative usage of these materials. At a
16 minimum, the management of these materials under
17 Subtitle D, instead of Subtitle C, will allow
18 continued current and future beneficial reuse
19 development.

20 From a technical perspective, the EPA's
21 own proposed regulations have the same liner
22 systems for both C and D and effectively change

1 the way wet storage is conducted, which I am fine
2 with. The Subtitle C designation will add on a
3 significant amount of time for permitting,
4 however, as facilities try to change from existing
5 systems to new requirements. This will occur at
6 the time these facilities need additional capacity
7 required by these regulations as they struggle to
8 keep up with demand.

9 I am strongly in favor of utilization of
10 geomembrane liner systems in large structural
11 fills applications, but with properly designed
12 engineering controls that offer maximum protection
13 of the environment. I also believe that CCRs used
14 in this manner can be considered beneficial reuse.

15 My company, Advanced Wall Technology,
16 has developed new, innovative and unique methods
17 for additional recycling/beneficial reuse of CCRs.
18 The potential regulation of CCRs as a Subtitle C
19 material, however, threatens that development.

20 The potential exists for AWT methods to
21 reuse 5 to 10 million cubic yards of material for
22 CCRs for the expansion of new facilities,

1 including utility CCR landfills, constructing
2 large road embankments, et cetera, above current
3 reuse rates.

4 Not only do these methods utilize a
5 significant volume of CCRs in construction, by
6 doing so, significantly reduce the number of new
7 landfills -- new landfills that would need to be
8 constructed in the years ahead as we develop as a
9 society by increasing, recycling, or reuse.

10 The Subtitle C designation of CCRs will
11 significantly impact the growth of the AWT process
12 implementation. The uncertainty and stigma to
13 date have already created adverse impacts. And
14 all CCRs used in the manner by AWT are fully
15 enclosed in geomembrane and geosynthetic systems
16 preventing adverse environmental impact. I've
17 attached a diagram in the written portion of my
18 testimony.

19 Most importantly, under the proposed EPA
20 regulations, no large structural fill applications
21 are considered as beneficial use, even if the
22 material is fully encapsulated by geomembrane or

1 other containment methods.

2 At the very least, we would suggest as
3 an alternative a Subtitle D designation for
4 management of CCRs with fully encapsulated
5 structural fills considered as beneficial reuse
6 and with properly engineered controls.

7 Thank you very much.

8 MR. BEHAN: Number 88.

9 MR. SNOW: Good afternoon. My name is
10 Tom Snow. I'm the director of environment health
11 and safety for Full Circle Solutions. We are a
12 small business that safely recycles coal
13 combustion residuals and CCRs in tumultuous
14 potting soils, masonry block, soil amendments and
15 geotechnical fills.

16 My comments today concern geotechnical
17 fills, a subject -- a beneficial reason that has
18 not been discussed to this point today.

19 The EPA has stated that large volume
20 geotechnical fills do not constitute beneficial
21 reuse. That decision was reached without giving
22 adequate consideration to the issue. In the

1 preamble to the current regulatory proposal, the
2 EPA stated that they reviewed only one large
3 volume geotechnical fill, the Battlefield Golf
4 Course in Eastern Virginia.

5 EPA's limited study of this project did
6 not seek to find the answers to many important
7 questions. It relied upon groundwater samples
8 with turbidity levels that indicated improper
9 sampling. Was this considered by EPA? It does
10 not mention it in their report.

11 The golf course was sold to new owners
12 who modified the layout, including pond locations.
13 Did the new configuration place surface water and
14 contact with the CCRs? This was not mentioned in
15 EPA's report, and the list goes on and on.

16 Full Circle Solutions has proved that
17 large volume geotechnical fills constructed in
18 accordance with Virginia's regulations are safe
19 for both groundwater and surface waters. Our
20 Peter's Pointe Business Park constructed in
21 Petersburg, Virginia actually was constructed
22 using 970,000 tons of CCRs. Construction was in

1 compliance with all regulatory requirements, such
2 as the separation from groundwater and surface
3 waters. Operational requirements, such as run-on
4 and run-off controls were among many other
5 controls that provided adequate protections.

6 For years, we have currently -- for
7 years, we have regularly monitored the quality of
8 both the groundwater and surface water of that
9 project. It is clean. It is safe for the
10 environment. Anyone here today who would like to
11 review those results, you can do so at our website
12 at www.SCSI.biz.

13 We have proven that properly engineered,
14 properly constructed, large volume geotechnical
15 fills are safe for the environment. Hundreds, if
16 not thousands of similar geotechnical fill
17 projects have been constructed in the United
18 States with no threat to the environment. EPA's
19 decision to prohibit such fills based upon one
20 potential damage case is simply premature.

21 The use of CCRs and geotechnical fills
22 has benefited not only our small business, but

1 also other small businesses that build their
2 facilities on properties we develop.

3 Therefore, we urge EPA to make an
4 informed decision on the very beneficial use of
5 CCRs as geotechnical fills. When placed in
6 carefully engineered, constructed and dry
7 regulated fills, CCRs are safe for the environment
8 and provide badly needed jobs.

9 Thank you.

10 MR. BEHAN: Thank you. Number 131.

11 MR. RUNKLE: Thank you for the
12 opportunity to speak. My name is John Runkle.
13 I'm legal counsel for the North Carolina Waste
14 Awareness and Reduction Network.

15 Now, we will be submitting written
16 comments later on as a part of the hearing record.
17 But just by initial reactions of the two options,
18 NC WARN really doesn't like either one. And the
19 reason is is the Subtitle C special waste -- I
20 don't know if this is a stigma, or what. I mean,
21 looking at any definition of hazardous waste, this
22 is a hazardous waste. Any similar waste removed

1 by any other industry, this would be a hazardous
2 waste because of the toxicity of the vast
3 different metals, the public health impacts that
4 it has. So this is a hazardous waste.

5 Whether this stigmatizes ash somehow or
6 another is not a regulatory issue. The stigma is
7 really one that people want to be able to do what
8 they have always done. And the utilities have not
9 spent the money that any other industry has put in
10 to taking care of their waste stream.

11 Now, the other thing we don't like about
12 this, that if this was any other waste stream,
13 these would be Superfund sites because they are
14 waste, they are open to the environment. Even the
15 lined sites -- very few in North Carolina are
16 lined sites. They are designed to include the
17 groundwater, they are designed to run over into
18 the rivers and streams.

19 Any other -- 10 years, 20 years ago, EPA
20 would be saying these are Superfund sites; we need
21 to spend the millions, if not billions of dollars
22 to clean them up like we did a lot of our chemical

1 industry and the other industries. So given the
2 choice, this is a hazardous waste. These are
3 Superfund sites. Let's clean them up.

4 Now, Subtitle D regulation by the states
5 is just not going to work. Local -- the State
6 governments have these billion-dollar deficits;
7 there's a complete lack of political will. These
8 things are not going to happen.

9 North Carolina has a law that says
10 annually that the utilities that produce coal ash
11 needs reports; what their -- how much ash they
12 generate, what they do with it, whether it's
13 recyclable, whether it's reused, how it's being
14 reused. And those reports go on to the State
15 government. It sits on the shelf of a bureaucrat
16 in the Division of Waste Management. They collect
17 dust. No one, besides me five years ago, ever
18 looked at them. And state governments are not
19 going to regulate it. They can't do it. They are
20 just not going to be able to regulate this
21 hazardous waste. They are not going to be able to
22 spend the money to clean up these Superfund sites.

1 Thank you.

2 MR. BEHAN: Thank you. Number 160.

3 MR. BOSS: Hi. My name is Stewart Boss,
4 and I'm the co-chair for the UNC Chapter of the
5 Sierra Student Coalition.

6 I'm here today because I'm deeply
7 concerned about the current management of toxic
8 coal ash in the U.S. I'm equally troubled by the
9 idea that my generation and those who come after
10 me will inherit a groundwater system irreversibly
11 contaminated by toxic coal ash if we fail to act
12 now to create enforceable Federal requirements for
13 cleanup and disposal of this highly hazardous coal
14 combustion waste.

15 Disturbing information about the large
16 number of high-hazard coal ash ponds in North
17 Carolina has further fueled my concern about my
18 drinking water and health effects of dangerous
19 heavy metals like arsenic, selenium, mercury and
20 lead.

21 Obviously, the number of high-hazard
22 sites in North Carolina indicates that our state

1 has failed to protect us from the environmental
2 and health effects of these types of coal ash
3 sites. The rationale for why we need to regulate
4 coal ash should not come as a surprise to the EPA.
5 Coal is dirty and is dangerous from
6 cradle-to-grave. And its harmful effects through
7 mining, burning and disposing of coal are now well
8 documented and scientifically proven, and yet, the
9 vast majority of states do not even require to see
10 if coal ash is polluting drinking water.

11 Our federal government is long overdue
12 to step in and hold polluting utility companies
13 accountable for their (inaudible) similar to the
14 massive Tennessee coal ash disaster of 2008.
15 These massive coal slug impoundments are a danger
16 in and of themselves. The Subtitle D option would
17 not establish any uniform federally enforceable
18 standards leaving us basically with the same
19 patchwork of inadequate state regulations that
20 have failed us up until now.

21 Under Subtitle D, ordinary citizens will
22 be left to fend for themselves against an enormous

1 industry that has no incentive to bear the expense
2 of safe and environmentally responsible coal ash
3 disposal. Industry concerns about costs are
4 completely overblown. Even if the entire cost of
5 the Subtitle C option was passed on to consumers,
6 electricity prices nationwide would only increase
7 by an average of less than one percent.

8 It is the EPA's responsibility to
9 prevent imminent and substantial endangerment to
10 health for the environment. Subtitle D would
11 completely undermine that responsibility. Now,
12 more than ever, it is key that our government
13 defends human health and environmental safety
14 against the special interests of the fossil fuel
15 industry.

16 The effects of toxic coal ash under the
17 status quo can be measured in lives lost and years
18 of illness. People must start coming before
19 profits.

20 Thank you.

21 MR. BEHAN: Thank you. 185.

22 MR. BAKER: My name is Kevin Baker. I'm

1 from UNC Chapel Hill. I want to start by thanking
2 the EPA for holding this hearing.

3 There are a lot of students, a lot of
4 people my age who understand this issue. And it's
5 pretty obvious; I think a lot of people in this
6 room might say that maybe I'm too young to
7 understand. The industry people might say that.
8 But it's pretty obvious; it seems clear to pretty
9 much everyone that you wouldn't want contaminants
10 in your drinking water. You wouldn't want waste
11 in your drinking water. That's basically the
12 choice we have here. You can either do nothing
13 with Subtitle D, or with Subtitle C you can make
14 sure there is no chance that it gets into our
15 drinking water.

16 I also want to say that this isn't a
17 third- world country, you know, this is the United
18 States of America and we have the resources to
19 make sure that there is no threat of having
20 contaminants in our drinking water. And there are
21 a lot of countries that aren't fortunate enough to
22 be able to make that choice, but we do. We have

1 the ability to stop this. And I'm afraid that if
2 we don't do anything today that this is going to
3 fade into the background. And maybe it won't come
4 up again for a couple decades and then our
5 generation is going to have to deal with this.

6 I think I've been fortunate in that I
7 hope my community has not been contaminated. I
8 hope that we are drinking safe drinking water.
9 But maybe in the next decade, if this issue
10 doesn't get resolved, my kids will be growing up
11 with mercury, arsenic, lead in their water, and
12 then it will be too late.

13 So thank you.

14 MR. BEHAN: Thank you. Number 87.

15 MS. BROWN: Good afternoon. My name is
16 Peggy Brown. I'm a resident of Florence County,
17 South Carolina. I'm representing the South
18 Carolina Chapter of Sierra Club as a conservation
19 chair with a state membership of over 5,000. I
20 also represent the League of Women Voters of South
21 Carolina as the natural resource director with a
22 membership of over 600.

1 The South Carolina chapter of Sierra and
2 the League of Women Voters strongly recommend the
3 EPA's consideration to regulate coal ash ponds
4 under Subtitle C, Resource Conservation and
5 Recovery Act, as it is the most protective choice
6 on the table.

7 South Carolina has 12 polluting outdated
8 coal burning power plants that require at least
9 one or more coal ash ponds. Leaching unregulated
10 coal ash ponds will percolate into the ground, and
11 without proper barriers eventually reach
12 groundwater and contaminate the water with toxic
13 waste.

14 Right now we have three known ash ponds
15 that are leaching coal waste in the groundwater.
16 At this time, South Carolina DHEC has no
17 groundwater monitoring system in place. Due to
18 budget restrictions, they have re-evaluated the
19 number of surface water monitoring sites and the
20 frequency of testing. With recent evidence of
21 groundwater contamination at the Wateree Eastover
22 site, DHEC has a pending groundwater monitoring

1 requirement to begin at some point. But in
2 reality, if they're having trouble, or if they're
3 having to cut back monitoring surface waters,
4 where will the funding come from to begin a new
5 groundwater monitoring program?

6 South Carolina has many rural areas that
7 rely on well water for drinking. State records
8 indicate the potential for more protect -- for
9 more private wells to be contaminated may occur.
10 Groundwater discharges from coal combustion waste
11 dumps may load drinking water sources with
12 contaminants that could increase nearby residents'
13 cancer to as high as a staggering 1 in 50, so you
14 report. Potential well water contamination of
15 rural South Carolinians put the already
16 economically challenged even at higher health
17 risks.

18 If the EPA will regulate coal ash under
19 Subtitle C, RCRA, the Rule for coal ash as
20 hazardous waste under Federal law, this will
21 require the industry to phase out porous sludge
22 ponds, replace them with sturdy, leak-proof

1 facilities. The Subtitle C will take the burden
2 off the State agency that is already physically
3 struggling and place the responsibility of cleanup
4 and up fitting on the utilities.

5 For years, the utility companies across
6 the nation have touted coal energy as cheap. The
7 time has come for the industry to realize coal is
8 not cheap in terms of cost to the public health
9 and degradation to the environment.

10 Thank you.

11 MR. BEHAN: Thank you. Will the persons
12 with number 89, 90, 91 come forward?

13 (No audible response.)

14 MR. BEHAN: 126? 174? 155?

15 (No audible response.)

16 MR. BEHAN: Number 89, could you come to
17 the podium.

18 MR. HARDIN: My name is Chris Hardin.
19 I'm a private citizen from Huntersville, North
20 Carolina. I'm a registered professional engineer
21 with 22 years experience. I'm registered in the
22 states of North Carolina, Tennessee and five other

1 neighboring states.

2 I work for SCS Engineers, but I am not
3 making my comments on behalf of SCS; I'm making my
4 comments as an engineer and a common sense forum
5 with a wonderful wife and four kids. My personal
6 experience is our family owns and operates, as a
7 part- time venture, Rivendell Farms. It's a
8 sustainable ag farm. It's located at the
9 headwaters of Gar Creek that drains to Mountain
10 Island Lake and Mecklenburg County's main drinking
11 water supply.

12 As a civil engineer, I was fortunate
13 enough to design the first permit application for
14 one of the first coal ash landfills after the TVA
15 Kingston failure. That's on the professional
16 side. I also gave a presentation in 2009; World
17 of Coal Ash on Best Management Practices for Coal
18 Ash Containments.

19 We are currently installing a 9.2 kW
20 solar system on our farm that will make us
21 essentially carbon neutral by the end of the year.
22 Over the past three years, I have also done a

1 pretty good amount of private research on the way
2 -- the positive way to regulate coal combustion
3 ash as they did in Europe. Coal combustion ash
4 can be safely handled in Subtitle D landfills with
5 virtually no risk to human health and the
6 environment. Private utilities, like Progress and
7 Duke, can only charge what the federal government
8 allows them to charge. Any substantial rate
9 increases will be passed on to us as the
10 consumers.

11 Europe, also as an example, recycles 50
12 percent of its coal combustion ash, and it never
13 declared coal combustion ash hazardous waste.
14 That's the key point.

15 I would go ahead and suggest the
16 following: First of all, 50 percent of our power
17 is produced by coal nationally. That didn't get
18 that way overnight. It's not going to change
19 overnight. Change is good, but rapid change can
20 be bad. As a professional engineer, and also more
21 as a -- as a common sense farmer, I would counsel
22 balance and gradual change. Rapid change in the

1 power industry will end up passing additional
2 costs on to the middle class and the poor, who are
3 most dependent upon cost-effective power.

4 Please do not declare coal combustion
5 ash hazardous waste. The entire process of
6 hazardous waste management is very, very
7 expensive. Implement instead, the Subtitle D
8 landfill guidelines that are already working well
9 in the containment of ash in North Carolina and
10 many of the neighboring states.

11 Remember, also, renewable energy takes
12 time and costs money to do that. The U.S.
13 government needs to learn, like everyone else,
14 that we have limited resources, and good things
15 like renewable energy takes time.

16 I would suggest following the example of
17 the Hardin family. Start raising your own food,
18 live a little slower pace of life, install a solar
19 system, aim for the carbon neutral on a personal
20 basis and allow the changes to happen over time as
21 a country. I would just suggest you look at
22 counseling slow change, gradual change.

1 MR. BEHAN: Thank you. Number 90.

2 MR. WALLACE: My name is Craig Wallace.
3 I'm a coal ash marketer. Based on my tacit and
4 explicit expertise of concrete coal ash marketing,
5 I can unequivocally testify that linking coal ash
6 with other hazardous by-products is a monumental
7 mistake if you're trying to promote coal ash for
8 beneficial use. It is a bad idea that is going to
9 have unintended consequences, not only in this
10 country but other countries around the world that
11 follow our government's lead. Without EPA's
12 unabashed support for beneficial uses, demand and
13 marketability of coal ash will decrease. EPA
14 support is already waning: The termination of
15 EPA's C2P2 website is a verifiable example.

16 A hazardous waste labeled coal ash is
17 totally unwarranted. Both Subtitle C and Subtitle
18 D proposals accomplish the end goals for citizens
19 impacted by coal ash disposal. Let me point out,
20 Kingston is a federal owned and operated facility
21 that had years of unstable sludge deposits that
22 triggered the spill that is serving as the

1 catalyst for federal oversight proponents today.

2 Recycling coal ash benefits our
3 environment and contributes to the conservation of
4 our resources and reduction of CO2 gases. Putting
5 coal ash disposal in the same group with other
6 Subtitle C wastes thinking it will have no effect,
7 or a positive effect on beneficial use, is pure
8 nonsense. We are going to have to dispose of more
9 coal ash if we go Subtitle C.

10 Today we are asked to provide verifiable
11 evidence that the hazardous stigma has
12 detrimentally affected beneficial use. I'd like
13 to know how we are supposed to do that and prove
14 that impact to something that has not yet
15 happened. This is a very convenient position for
16 Subtitle C proponents and very disheartening for
17 those of us who know the coal ash markets.

18 I do not believe there is a person in
19 this room who thinks what happened in Roane County
20 is acceptable. Beneficial use marketers
21 understand there are gaps in current disposal
22 rules. These gaps will be fixed with Subtitle D.

1 So let's fix the problem without stigmatizing coal
2 ash as hazardous waste.

3 But the EPA continued to support coal
4 ash beneficial use without creating an oxymoron
5 scenario that is going to reduce demand for coal
6 ash.

7 Thank you.

8 MR. BEHAN: Thank you. Number 91.

9 MR. COMPTON: My name is Randy Compton,
10 and I am a resident of Knoxville, Tennessee. And
11 I've been in the coal management marketing
12 business for over 30 years. I'm currently
13 employed at Charah as vice president of sales.

14 It is my honest opinion, as both a
15 concerned citizen and as a coal material marketer,
16 the regulation to CCR as a hazardous material
17 would cause great harm to the years of progress
18 made in one of the most successful recycling
19 programs in the world.

20 I live with stigma already every day;
21 the stigma of the unknown. I see it. It's not
22 the economy; it's that people are starting to pull

1 back because of the risk factors that sometime
2 down the road is declared hazardous. That's the
3 reality of it. They can believe stigma or not,
4 but I live with it every day.

5 My customers that I deal with already
6 know what's the composition of the materials and
7 minerals that are in the products that I sell. It
8 is well documented that the chemical constituents
9 in CCRs are the same as commonly found in many
10 everyday products in naturally occurring soils.
11 There's no good reason to risk destroying CCR
12 recycling. EPA's own proposed Rules as far as a
13 landfill engineering standpoint would be
14 essentially the same between the C or the D.

15 The Association of American Concrete
16 industry has recognized that the use of CCRs in
17 concrete make their products better by making the
18 concrete less permeable, more dense, dehydration
19 is slower and less water demand. State DOTs
20 readily accept the use of CCRs in the concrete;
21 private, bridge decks and (inaudible).

22 The Federal Highway Works Administration

1 has continued to push with recycling of CCRs in
2 all interstate products. If CCRs are declared
3 hazardous special waste, we risk losing the
4 environmental benefits that come from recycling
5 major tons of this material, driving up the cost
6 of construction, the cost of the utility industry,
7 and ultimately, the ratepayer, not to mention the
8 millions of tons of greenhouse gases that will be
9 generated making virgin progress to replace the
10 loss of CCPs in the market.

11 The EPA can enact new regulations while
12 encouraging the safe recycling CCRs as preferred
13 disposal. To do so, EPA should not regulate CCRs
14 as hazardous or special waste under Subtitle C,
15 but instead should find a way to regulate under
16 Subtitle D and avoid damaging the CCR recycling
17 industry.

18 I dare say that the concrete slab you
19 are standing on today has coal ash in it. The
20 roads you rode in on did, the bridge decks you
21 crossed did, the landing strips that you land your
22 airplanes on, they all got CCRs in them. Lower

1 heat of hydration makes a better product.

2 Thank you.

3 MR. BEHAN: 155.

4 MR. WASHINGTON: Thank you. My name is
5 Calvin Washington. I'm on Richland County
6 Council, and I represent a district that has a
7 coal-fire ash plant.

8 I want to put a face to the folks that
9 live around here. My community has a national
10 park; the only national park in South Carolina,
11 the Congaree National Park. The land is owned by
12 -- the land mass is 80-percent owned by
13 African-Americans. We have low-income folks. We
14 have two major rivers that flow in my district
15 that are contaminated. Nobody can fish in it. We
16 have mercury levels, we have arsenic levels that
17 are very high.

18 I have three Fortune 500 companies in my
19 district; major international companies. But the
20 economy of my district is low. Those jobs are
21 going somewhere else; other counties. They do not
22 want to stay here. People do not want to live in

1 that area, but us.

2 Our concern about this plant putting an
3 ash dump -- because right now, I have a Superfund
4 site from a nuclear waste facility. I have a
5 facility that creates the barrage for nuclear
6 plants. I have a paper plant, and now I've got an
7 ash plant -- dump. They are dumping in our river
8 right now. DHEC, which I thought was an agency
9 that supported the community, they pretty much
10 ordered these companies to do what they want in
11 these communities.

12 I'm asking EPA to make sure they put
13 regulations in place for these ash dumps to stop
14 dumping into our rivers. Right now, we cannot
15 even build economy or recreate within our rivers.
16 We have over 300,000 people that come to visit our
17 park; our national park. We cannot open
18 restaurants because of our groundwater
19 contamination issues. We just got a grant --
20 water into one area, but to expand it out it costs
21 even more. And that's the burden on the county
22 that I cannot put on the county right now.

1 I'm asking DHEC -- I mean EPA to really
2 look at the regulations that DHEC have allowed to
3 get to this point with this coal ash plant. I
4 implore you to come down into my area. I invite
5 you. Matter of fact, I'll make a full invitation
6 for you all to come to look at the faces of those
7 folks -- they would have loved to have been here,
8 but a lot of folks have to work. They can't be
9 here, and I'm here to represent those folks. And
10 I implore you to come down here and visit with us.

11 Thanks a lot.

12 MR. BEHAN: Thank you. Is 126 or 174
13 here?

14 (No audible response.)

15 MR. BEHAN: Are numbers 93, 94, 95 and
16 96 here? Have they showed up?

17 SPEAKER: 96.

18 MR. BEHAN: 96 is here. 97, 98, 99 and
19 100? I believe 100 is here. 315. Is there
20 anyone else in the room that has a number greater
21 than 300 that has not spoken today?

22 (No audible response.)

1 MR. BEHAN: Number 82. Number 82?

2 MR. BELOW: Good afternoon. My name is
3 Brian Below, and I'm the general manager of Boral
4 Composites, Inc. Boral Composites is a new
5 start-up business and a wholly-owned subsidiary of
6 Boral U.S. Focused on the manufacture of green
7 building products. As a startup, we are just
8 commercializing our first product line which has
9 been engineered to be roughly 80 percent recycled
10 and bio-based, rapidly renewable material.

11 A critical component in our product is a
12 particular type of coal combustion residual, which
13 not only offers unique and improved performance
14 properties, but allows us to provide this
15 exceptionally high level of green content. Our
16 business is based on selling these green building
17 products to both the construction industry and the
18 end customer.

19 As such, we are extremely concerned
20 about the EPA's proposal for relabeling CCRs as
21 hazardous through a RCRA Subtitle C designation
22 and the negative stigma that that would create

1 within our customer base; homebuilders,
2 contractors, installers and homeowners.

3 Our customers are not typically
4 scientists or environmental policy makers. They
5 will likely not be aware that the EPA has formally
6 encouraged the use of CCRs since 1983 or that the
7 EPA has twice ruled that CCRs are nonhazardous,
8 going so far as to form the Coal Combustion
9 Products Partnership in 2003, or that U.S. Green
10 Building Council, American Society for Testing and
11 Materials, and American Concrete Institute all
12 endorse and encourage the use of the CCRs.
13 Unfortunately, our customers are more likely to
14 hear inaccurate information about CCRs and their
15 beneficial uses from uninformed and/or biased
16 media sources, creating a negative stigma that
17 will only be exacerbated with an unwarranted
18 change in designation to RCRA Subtitle C.

19 We certainly support the EPA's efforts
20 to protect human health and our environment. We
21 further believe that CCR disposal should be done
22 in a responsible manner to avoid ash spills, like

1 the tragic storage failure at Kingston, Tennessee
2 in December 2008.

3 However, poor storage practices and
4 mishandling of the material itself should not be
5 grounds for changing the classification of that
6 material, and thereby jeopardizing one of the most
7 successful recycling programs in U.S. history.

8 Boral Composites is only a small
9 start-up business, but it's a great example of the
10 green-tech, advanced manufacturing opportunities
11 that our economy desperately needs. Last
12 Thursday, September 9th, we celebrated the
13 groundbreaking for our first commercial scale
14 manufacturing facility being built just up by I-
15 85 in East Spencer, Rowan County, North Carolina;
16 a \$13 million 3.7 acre site, Leadership in Energy
17 and Environmental Design certified project that
18 will create 25 jobs when fully operational.

19 The decisions that the EPA makes around
20 CCR classification will directly impact this new
21 green- tech business, these new job opportunities
22 and the future job opportunities that this

1 business would create. The negative stigma
2 associated with the hazardous classification
3 through Subtitle C is real and will virtually
4 eliminate the demand for our products and our
5 business overnight.

6 Let's find a more responsible way to
7 deal with the CCR storage issues that Kingston,
8 Tennessee has brought to light. Subtitle C is not
9 the answer.

10 Thank you.

11 MR. BEHAN: Thank you. Number 96.

12 MR. PETERSON: Good afternoon. My name
13 is Terry Peterson. I just happen to also work for
14 a subsidiary of Boral, by chance, the way the
15 numbers worked out.

16 But I work for the ash marketing group
17 of Boral Industries. We employ 161 people. We
18 operate in 18 states across the southern half of
19 the United States. I've been in this industry for
20 27 years and most of my experience has been
21 related to beneficial reuse and landfill
22 management as well.

1 I'd like to open my statement today by
2 applauding the EPA for supporting and maintaining
3 a Subtitle D classification for CCRs since
4 enactment of the Bevill Amendment in 1980. That
5 support has underpinned the establishment and
6 development of arguably one of the most successful
7 recycling programs in U.S. history.

8 Sustaining a Subtitle D classification
9 has created confidence amongst end users and
10 producers that has allowed this program to
11 flourish and ultimately eliminate the need to
12 dispose of millions of tons of CCPs as well as the
13 avoidance of millions of tons of greenhouse gas
14 emissions.

15 I've recognized during these hearings
16 that some would argue that Subtitle C
17 classification is the appropriate response to
18 isolated occurrences of poor landfill management.
19 Throughout the years, Subtitle C will undo and
20 potentially reverse 30 years of recycling efforts,
21 and more importantly, eliminate investment in new
22 technologies and products which are required to

1 further promote today's recycling efforts.

2 Investors, whether private or taxpayers,
3 do not put money into hazardous waste. Just as
4 importantly, consumers have no desire to purchase
5 products that contain hazardous waste.
6 Maintaining a Subtitle D classification is
7 necessary to build upon the recycling momentum
8 created over the past 30 years. Eliminating land
9 filling through recycling is the appropriate
10 course of action that will provide the most
11 benefit to all U.S. citizens.

12 I encourage EPA to maintain a Subtitle D
13 classification for CCRs while also working with
14 State regulators to improve landfill management
15 procedures. This logical approach will provide
16 the solution for both sides of this debate.

17 Thank you for your time.

18 MR. BEHAN: Thank you. Number 93.

19 MR. CRAIG: Thank you. My name is Keith
20 Craig, and I'm a union representative for the
21 International Brotherhood of Electrical Workers.
22 I represent the operations, I&C maintenance for

1 fossil, hydro, and nuclear employees on the
2 property of the TVA. Prior to that, I worked as a
3 control room operator at the TVA's new
4 Johnsonville Fossil Plant for 24 years.

5 Today I'm here to speak out for jobs;
6 the jobs my members currently enjoy in the fossil
7 power generation field. These jobs provide a good
8 wage, good benefits and economic stability for
9 their families. In today's time, good jobs are
10 hard to come by. So in that regard, I stand
11 before you today to speak out in opposition to the
12 proposal to regulate coal combustion residuals in
13 Section C (sic) as hazardous waste. As someone
14 who has worked boiler bottoms, precipitators and
15 hoppers, I feel qualified to say this material is
16 not hazardous. But with most things, when they're
17 improperly handled, problems can arise.

18 Therefore, I'm in support of the EPA's
19 proposal to regulate CCRs under Subtitle D as
20 nonhazardous waste.

21 The IEBW supports a clean and safe
22 environment, and that's the easy thing to say.

1 Everybody does. The real challenge is to provide
2 that protection with reasonable rules that protect
3 the environment without creating unnecessary job
4 losses in the process. The IEBW believes that by
5 supporting Subtitle D for nonhazardous waste, this
6 will be accomplished more easily. It will also
7 allow for the recycling of coal ash to continue
8 without the stigmatization of classifying CCRs
9 under the same section as hazardous waste, which I
10 am certain would be harmful to that business.

11 I'll take a minute to -- what prompted
12 this discussion was, I guess, Kingston Fossil
13 Plant. One of the dikes released -- 4.4 million
14 cubic yards of fly ash were released over
15 approximately 300 acres. That's a fact. It
16 happened and, unfortunately, in TVA there's very
17 few regulations that they are held to. Unlike the
18 BP Gulf Coast disaster, nobody in TVA was held
19 accountable. Knowing that fact and now seeing
20 proposed regulation on CCRs sends a mixed signal
21 to the people I represent. They are concerned
22 this regulation will put their jobs at risk and

1 they will be the ultimate losers.

2 So in dealing with public concern, I ask
3 you to address the root cause of the accident.
4 Fix the problem. Fix what's broken.

5 Thank you.

6 MR. BEHAN: Thank you. Number 97.

7 MS. MAYS: Hello, and thank you for this
8 opportunity to speak. My name is Willa Mays, and
9 I'm the executive director of Appalachian Voices,
10 a nonprofit environmental organization that is
11 charged with protecting the land, the air, the
12 water, and the communities of central and southern
13 Appalachia.

14 In December of 2008, our staff was among
15 the first to take water samples from the Emory
16 River in the wake of the Kingston coal ash pond
17 failure in Harriman, Tennessee. We assembled a
18 team of researchers from Appalachian State
19 University and the Tennessee Aquarium Conservation
20 Institute and over the past two years have
21 expanded our initial testing to include water
22 sediment and fish in the Emory, Clinch, and

1 Tennessee Rivers. We issued reports in January
2 and May 2009 that detailed our findings. Arsenic,
3 barium, cadmium, lead, and the selenium in the
4 Emory River exceeded protective drinking water
5 and/or aquatic life criteria levels. Ash and
6 ash-laden river sediments had arsenic levels that
7 exceeded EPA removal limits. Selenium levels
8 increased dramatically downstream of the spill
9 with levels in fish beyond the thresholds of
10 toxicity for reproduction and growth. And in
11 North Carolina, our staff reviewed groundwater
12 data from 13 coal ash ponds operated by Duke and
13 Progress Energy. We issued a report in October
14 '09 that showed 681 exceedances of groundwater
15 standards for arsenic, boron, cadmium, chloride,
16 iron, lead, magnesium, pH, and total dissolved
17 solids. The level of exceedances ranged from 1.1
18 to 380 times higher than the North Carolina
19 groundwater standard.

20 We have direct hands-on experience with
21 coal combustion waste and its impact to waterways
22 in North Carolina and Tennessee. Our research has

1 consistently shown that coal ash contaminates
2 groundwater, surface water and aquatic life with
3 toxic heavy metals in 100 percent of the cases we
4 have investigated. The science is clear. Coal
5 combustion waste is hazardous and it poisons
6 water.

7 The current state by state regulatory
8 framework is not working. The regulation of coal
9 combustion waste under Subtitle C by the federal
10 government is the only option that will protect
11 communities and waterways. All wet storage of
12 coal ash in open pits should be eliminated, and
13 coal combustion waste should be federally
14 regulated.

15 Thank you very much.

16 MR. BEHAN: Thank you. Number 100.

17 MR. WINEBRENNER: Good afternoon. My
18 name is Guy Winebrenner. I am the director of the
19 Energy Business Practice for MACTEC Engineering
20 and Consulting, a top 40 engineering design firm
21 with over 20 years of experience in coal
22 combustion products management with 7 of the top

1 10 coal generated utilities. Our work is centered
2 on both safety analysis of coal combustion
3 residual storage facilities as well as the impact
4 of these facilities upon the environment.

5 We would like to address in this
6 testimony three specific aspects of the proposed
7 regulations: First, the appropriateness of state
8 versus federal control of storage facilities for
9 coal combustion residuals. Secondly, the benefit
10 of providing for innovation in the means of proper
11 storage of CCR. And thirdly, the importance of
12 continuing the provision of opportunity for the
13 beneficial reuse of coal combustion residuals.

14 Based on our experience in seven states
15 where coal is used to fuel a significant portion
16 of the electric generation output, we have found
17 that the state regulatory programs controlling dam
18 safety, landfill design, groundwater protection,
19 at both point and nonpoint source discharge
20 provide an adequate framework to provide for
21 public safety, property protection and
22 environmental preservation when properly applied.

1 Moreover, the State regulatory programs
2 are designed to take into consideration the
3 specific geographic, geologic and water resources
4 features that can affect the proper operation of
5 CCR storage facilities. Consequently, we see no
6 reason -- no compelling reason to move the control
7 of CCR under the hazardous waste management
8 requirements of the Subtitle C.

9 Regardless of whether the CCR storage
10 regulations are developed under Subtitle C or
11 Subtitle D, the ensuing regulations should provide
12 performance rather than prescriptive requirements
13 to be met. By establishing performance standards
14 to be met, a framework allowing for innovation,
15 incorporation of the developing best practices and
16 site-specific solution is promoted. This approach
17 can result in solutions that are not only more
18 cost-effective, but can also provide better
19 protection of property and the environment in view
20 of the specific site considerations encountered.

21 The beneficial reuse of CCR, such as fly
22 ash and gypsum in construction materials, such as

1 concrete and wallboard not only reduces the
2 overall quantity of CCR to be stored, but also
3 provides a means to offset the cost of CCR
4 storage. In addition, the CCR incorporated into
5 beneficial products takes the place of other raw
6 materials that would need to be obtained from
7 other sources. This provides a secondary benefit
8 of reduced impact on the environment from the
9 mineral extraction activities required to provide
10 these new materials.

11 Thank you very much.

12 MR. BEHAN: Thank you.

13 MS. LOWE: Hi, my name is Rebecca Lowe
14 and I'm a senior at Warren Wilson College in
15 Asheville, North Carolina. I'm not going to go
16 through all the reasons because I think they've
17 been pretty eloquently stated before -- better at
18 public speaking than I am, but I'm just here to
19 say that I am in full support of Subtitle C. I do
20 think that in an ideal world Subtitle C would also
21 list coal ash as a hazardous and not a special
22 waste, and prohibit its use in quote, "beneficial

1 use" in products, because toxic waste should not
2 be in our products at all in my opinion.

3 But yeah, I just wanted to get my voice
4 heard and I'm glad to be here today. Thanks for
5 holding this hearing.

6 MR. BEHAN: Thank you. Numbers 101,
7 102, 103, 104, and 326. If 101 could come to the
8 podium that would be great, thanks.

9 MS. CAVE: Good afternoon. I'm Nancy
10 Cave, north coast office director of the South
11 Carolina Coastal Conservation League, an
12 environmental advocacy organization with over
13 4,000 members in South Carolina and across the
14 nation. I am here this afternoon on behalf of the
15 League and our members to ask EPA to rule coal
16 combustion waste a hazardous waste regulated under
17 Subtitle C of the Resource Conservation and
18 Recovery Act.

19 It is critical to the quality and safety
20 of our water in South Carolina that coal ash be
21 recognized as significantly more dangerous than
22 household garbage. Regulating it as a toxic

1 substance will protect human and environmental
2 health. South Carolina has 14 coal generating
3 plants producing over 2.1 million tons of ash
4 annually. This ranks South Carolina 20th in the
5 country for coal ash generation. The coal ash is
6 placed in 22 ash ponds at nine plants and at least
7 five landfills. And according to your 2007
8 assessment, six of these ponds and landfills are
9 unlined and one is clay-lined. Of these sites six
10 do not have leachate systems. All of the plants
11 are sited on rivers and lakes; rivers that are
12 sources of drinking water for communities up and
13 down their length.

14 In Georgetown County where I live the
15 state- owned utility, Santee Cooper, operates the
16 Winyah power station with 6 ash ponds on the
17 Sampit River. In Horry County, Santee Cooper
18 operates the Dolphus M. Grainger power station
19 with two ash ponds on the Waccamaw River which
20 supply drinking water to the communities of Myrtle
21 Beach and Georgetown, just to name two.

22 The Environmental Integrity Project

1 found that the Grainger ponds contaminated
2 groundwater near the Waccamaw River with arsenic
3 91 times the state drinking water standard.
4 Ruling coal ash to be a hazardous waste is a
5 precautionary action that will protect the waters
6 of South Carolina and the nation, but more
7 importantly a Subtitle C ruling will protect the
8 children and adults from toxins that according to
9 EPA's own studies cause serious health threats.
10 Again, we ask that the EPA rule coal combustion
11 waste be regulated under Subtitle C.

12 Thank you.

13 MR. BEHAN: Thank you. 102? Is 102
14 here? 103? 104?

15 MR. GOODMAN: Good afternoon, everyone.
16 Thank you for having me today and thank you for
17 being here. I am John Goodman. I am the director
18 of governmental affairs at the North Carolina
19 Chamber of Commerce and I want to say a few words
20 today that's going to hopefully express our
21 support for regulating coal ash in a way that
22 protects our communities while also protecting

1 North Carolina jobs and maintaining an affordable
2 electric rate. For us that means Subtitle D, not
3 hazardous regulation.

4 It's been well demonstrated that a
5 hazardous designation for coal ash would
6 effectively end the beneficial use of CCRs.
7 Currently more than 50 million tons of CCRs are
8 recycled annually. This has an annual impact of
9 about \$9 billion on the U.S. economy. Designating
10 coal ash as hazardous would cripple the many
11 businesses that rely on these products for their
12 livelihood due to the liability, stigma and
13 marketing concerns that a hazardous label carries.

14 Additionally, we also see the same
15 impacts on the electricity industry. A hazardous
16 ruling will require the early retirement of coal
17 plants and the coinciding jobs, leaving
18 industrial, commercial and residential electric
19 customers footing the bill.

20 Here are some of the staggering costs
21 developed by the EOP group in 2000, a decade ago,
22 for electric utilities to comply with Subtitle C

1 regulations. And these costs are being updated
2 now. If CCRs are regulated as a hazardous waste,
3 the cost is estimated at \$13.8 billion annually.
4 The cost of mandatory closure of CCR surface
5 impoundments would be \$39 billion annually.
6 Whether coal ash is regulated as hazardous or not
7 hazardous waste. The cost increases have to be
8 passed to consumers who will likely see hefty rate
9 increases. Those facilities where the cost
10 investment is too high will be shut down, while
11 replacement capacity will be needed to maintain
12 capacity margins required by public utility
13 commissions who serve electric customers.

14 In effect, you're paying twice; once for
15 retiring units, and again for replacing
16 electricity. You need to fill the gap.

17 If replacement capacity can't be
18 arranged quickly enough we're looking at serious
19 liability concerns that come within the potential
20 national shortfall of electricity to meet growing
21 customer demand. And while wind and solar can be
22 part of that solution, they can't produce enough

1 or store enough to fill that void. Only one third
2 of at-risk capacity needs to be replaced. The
3 gross replacement cost will be \$12-\$37 billion and
4 this is in addition to \$39 billion needed to close
5 the surface impoundments.

6 So in conclusion, a Subtitle C hazardous
7 designation will have far-reaching effects on
8 American jobs, the economy and electrical
9 reliability across the nation. That's a high
10 price to pay for the increased requirements in
11 Subtitle D would accomplish added environmental
12 protection without the cost.

13 Thank you for your time.

14 MR. BEHAN: Thank you. 326?

15 MS. THIRION: I think frogs are the
16 future. Frogs are the canary in the mine shaft,
17 by the way.

18 I envision a planet that is healthy and
19 on which many more generations can enjoy its
20 beauty and health. I have come to the realization
21 that such envisioning does not make it so.
22 Without drastic action and a conscious commitment

1 to righting the wrong, what is wrong, we will not
2 have much of the planet left.

3 That is why I have been looking into the
4 disappearance of amphibians. Amphibians and frogs
5 are our canary in the mine shaft. I brought a few
6 statistics with me. A three-year effort involving
7 more than 520 scientists from 60 nations concluded
8 that more than 1,800 of 5,743 known amphibian
9 species, or nearly a third, are threatened with
10 extinction. Since 1980, as many as 122 kinds of
11 amphibians may have become extinct, and 34
12 extinctions are confirmed. There are several
13 causes for this decline. Pesticides are one, and
14 coal ash is another since the poison seeps into
15 our groundwater. It is no accident that residents
16 closest to the plants have such an elevated rate
17 of cancer and thyroid incidence. But it is only a
18 matter of time before we all are affected. That
19 is why I want to see coal ash regulated under
20 Subtitle C.

21 And one other thing: what's good for the
22 goose is good for the gander. So my other request

1 is that the CEOs and the top decision-makers who
2 will benefit from the status quo are required to
3 reside within 10 miles of a coal ash site.

4 MR. BEHAN: Ma'am, could you state your
5 name for the record?

6 MS. THIRION: Terry Thirion.

7 MR. BEHAN: Great, thank you.

8 MS. THIRION: Thank you.

9 MR. BEHAN: I called 102 and 103. Are
10 they here?

11 (No audible response.)

12 MR. BEHAN: 106, 107, and 108?

13 (No audible response.)

14 MR. BEHAN: 327? Is 176 here?

15 (No audible response.)

16 MR. BEHAN: 106?

17 MR. PRESTON: Thank you very much. My
18 name is Jack Preston. I am a director of
19 corporate environmental services for the SCANA
20 Corporations. SCANA's largest subsidiary, South
21 Carolina Electric and Gas Company, also known as
22 SCE&G, has a generating capacity of 5,800

1 megawatts of electricity, mostly from coal-fired
2 generation.

3 Essentially, we are convened here today
4 to answer three basic questions: one, is
5 classifying coal combustion residuals or CCRs as
6 hazardous waste really necessary? Second question
7 is, what are the implications if CCRs are
8 classified as a hazardous waste? And the third
9 one is what is the appropriate course of action
10 for EPA to take in this matter?

11 So let's start with the first question.
12 Is classifying CCRs as a hazardous waste
13 necessary? The answer is no. Concentrations of
14 contaminants found in fly ash, bottom ash and
15 other CCRs produced by utilities are typically
16 well under the hazardous toxicity levels set forth
17 by EPA. In two separate reports to Congress, the
18 EPA itself has previously concluded that CCRs do
19 not warrant regulation as a hazardous waste.

20 Bottom line, CCRs do not pose a
21 potential health concern when properly managed.
22 This leads us to question number two: What are

1 the implications if CCRs are classified as
2 hazardous waste? Well, for starters it pretty
3 much effectively kills the commercial market for
4 products manufactured with the recycled CCRs.
5 Nationwide over 43 percent of CCRs are recycled
6 annually for use in cement and concrete. At
7 SCE&G, we have successfully recycled over 45
8 percent of the CCRs we've produced over the past
9 three years, mainly for use in cement and concrete
10 industry.

11 End users of CCRs have warned us
12 directly that subjecting CCRs to hazardous waste
13 regulation will significantly curtail the
14 beneficial use of CCRs, if not ending it entirely.
15 The irony of this is that such a move would result
16 in significant negative impacts to the
17 environment.

18 For an example if CCRs such as fly ash
19 are no longer viably available for things like
20 highway and building construction, then other
21 things have to be mined and found to replace it.
22 It's estimated that the beneficial use of CCRs

1 saves over 73 trillion BTUs of energy, which
2 reduces greenhouse emissions by 12.4 million
3 metric tons of CO2. It also has an estimated
4 value of over \$2 billion in the US economy.
5 Having to landfill this extra ash is approximately
6 a 50-fold increase in the volume of hazardous
7 waste disposed of annually in landfills. That
8 doesn't even take into consideration the hundreds
9 of millions of tons of existing CCRs.

10 This will create a true crisis, an
11 immediate and critical shortfall in hazardous
12 waste disposal capacity that cannot be mitigated
13 by new landfills.

14 MR. BEHAN: Sir, why don't you wrap up
15 your comments?

16 MR. PRESTON: Yes, and I'll turn it over
17 the next person, 107, if it's okay with you, and
18 he will continue.

19 MR. BEHAN: 107.

20 MR. EFFINGER: Tom Effinger. I'm a
21 manager at SCANA Corporate Environmental Services
22 department. I want to add on to what Jack was

1 saying because in South Carolina, it currently
2 takes on the order of 8 to 10 years to permit,
3 construct an industrial waste landfill and that's
4 a nonhazardous landfill. Given the complexities
5 and contentious natures of a hazardous waste
6 landfill, that time frame could be doubled if even
7 allowed at all. There are no hazardous waste
8 landfills in South Carolina.

9 With public opposition and legal
10 challenges to new landfills the ability to
11 successfully permit and construct new hazardous
12 Subtitle C landfills may be virtually impossible,
13 resulting in situations where coal-fired plants
14 would need to cease operations, depriving
15 residential and business customers of affordable
16 power. The state environmental protection
17 agencies from around the nation have repeatedly
18 cautioned EPA that the Subtitle C approach will
19 overwhelm existing hazardous waste disposal
20 capacity and further burden strained state budgets
21 and staff resources.

22 Regulating CCRs as hazardous would also

1 raise unwarranted liability concerns related to
2 materials that have been incorporated into
3 commercial and residential products such as
4 wallboard. Who's going to want to fill their new
5 house with wallboard if it contains a material
6 that the EPA is regulating as hazardous waste?

7 Obviously the collective costs involved
8 with managing CCRs as hazardous waste are almost
9 incalculable and will certainly represent an
10 enormous financial burden for the customers of our
11 nation's utilities at a time when they can ill
12 afford it.

13 So what is the appropriate course of
14 action for EPA to take in this matter? EPA has
15 repeatedly determined that CCRs do not warrant
16 regulation under Subtitle C. It makes no sense to
17 declare it now to be hazardous in reaction to a
18 civil structural failure.

19 As recently as last week the Tennessee
20 Department of Health, under a cooperative
21 agreement with the agency for Toxic Substances and
22 Disease Registry, released a final report finding

1 only minimal risk from the coal ash spill at TVA's
2 Kingston facility. The CCRs produced by SCE&G and
3 other utilities do not meet EPA's hazardous waste
4 levels and therefore, SCE&G believes they should
5 be more appropriately regulated as non-hazardous
6 waste under the proposed Subtitle D option,
7 including modification that integrates with
8 current state regulatory programs, such as South
9 Carolina Department of Health and Environmental
10 Control's solid waste regulations. This approach
11 will create a reasonable and effective regulatory
12 program that protects the environment, retains
13 options for beneficial use and preserves jobs
14 while not adversely impacting our economy.

15 Thank you for your time.

16 MR. BEHAN: Thank you. 108?

17 MR. KIRKLAND: My name is Taylor
18 Kirkland from Buncombe County, North Carolina and
19 I'm here today as a concerned citizen, as a young
20 person who hopes to live out the rest of my life
21 in a community where a coal ash pond is located.
22 I live in this state and pay taxes to this state,

1 and I vote for the people who run this state and
2 now I'm here as my citizenship asks of me, to tell
3 you that federal safeguards need to be issued
4 quickly to ensure the protection of people and
5 waterways of the state.

6 There are a good number of smart people
7 in this room; scientists and physicians, local
8 business people, industry experts, and I don't
9 have the kind of training that these people have
10 so I can't talk about toxicological consequences or
11 any kind of beneficial uses of coal ash. But I
12 can connect dots fairly well. When Progress
13 Energy's voluntary monitoring data states that
14 boron, chromium and manganese have contaminated
15 the groundwater at the Asheville plant in the
16 community where I live, I know that's not okay.
17 When living near a coal ash storage pond,
18 according to the EPA, is more dangerous than
19 smoking a pack of cigarettes a day, I know that's
20 not okay. When I come to events like this and I
21 listen to testimonies of people who have been
22 affected by coal ash and when I reflect on the

1 damage that has taken place because of this lack
2 of regulation, I know that that's not okay.

3 And I think any right-minded person can
4 tell you that these things are not okay. That
5 which is good for business is not always good the
6 rest of us. The TVA disaster clearly shows what
7 happens when we leave the industry to itself.
8 It's not okay to maintain a business as normal
9 attitude when people's health is at stake. It's
10 not okay when money becomes more important than
11 people. I'm here today to ask the EPA to do the
12 right thing. I'm asking you to call coal ash what
13 it is, a hazardous material.

14 There are a lot of people who can't
15 afford to be in the room today who are depending
16 upon you to make the right choice. I urge you to
17 adopt the Subtitle C option of the CCR rule in
18 order to protect those threatened by the
19 unregulated dumping of coal ash. This is the only
20 option that will work to bring the real
21 protections for the entire country from the
22 dangers of coal ash. Thank you.

1 MR. BEHAN: 176?

2 MS. TIMMERMANN: Hi, my name is Taylor
3 Timmermann. I'm co-chair for the Sierra Student
4 Coalition at UNC Chapel Hill. First, thank you
5 for hearing my statement today, and I applaud the
6 EPA for examining the environmental and health
7 effects that toxic coal ash has on dozens of
8 communities in North Carolina.

9 What I found most disturbing concerning
10 the lack of regulation on coal ash is the fact
11 that individuals are subjugated to the dangerous
12 health effects without their knowledge. In my
13 hometown of Asheville the neighbors surrounding a
14 coal ash pond were completely unaware of their
15 proximity to the dumping site or the hazardous
16 effects that coal ash can have on their health and
17 the environment. In Asheville a coal ash pond can
18 easily seep into the groundwater or further
19 threaten the French Broad River, which already
20 contains an alarming amount of arsenic, most
21 likely caused from the coal ash pond being dumped
22 into the river.

1 We experience the detrimental effects
2 coal ash can have on the river as demonstrated by
3 the recent incident in which five million cubic
4 yards of coal ash breached the dike in Tennessee
5 in 2008, dumping sludge into the Emory River. How
6 many more rivers must be compromised before the
7 EPA takes action in regulating this pollution? It
8 is proven that coal ash has harmful health and
9 environmental effects. It's also been established
10 that in the long run the regulation of coal ash
11 will generate billions of dollars in benefits and
12 prevent future environmental disasters like the
13 Tennessee spill. I'm speaking today as part of a
14 coalition of concerned students asking the EPA to
15 regulate coal ash wherever it is. The EPA should
16 not wait for another environmental disaster to
17 occur but rather should begin to classify coal ash
18 as hazardous and require companies to be held
19 accountable for waste they produce from cradle to
20 grave, as outlined in Subtitle C.

21 Again, thank you for having us today.

22 MR. BEHAN: 327.

1 MS. BUTLER: Hello, I'm Suzanne Butler
2 and in the interest of full disclosure, I work for
3 Norfolk Southern Corporation, and we've been
4 transporting via rail the fly ash from Kingston
5 down to the landfill in Alabama. I've been to the
6 Kingston site many, many times and to the landfill
7 in Alabama multiple times as well. However, I am
8 speaking as a private citizen today.

9 First off, I want to say that I am fully
10 in favor of protecting our environment for our
11 current and future generations. Also on a
12 personal note I had cancer myself last year and I
13 went through chemo and radiation. I wouldn't wish
14 that on anyone. I'm glad it's there but I'm all
15 in favor of keeping any carcinogenic elements out
16 of our drinking water and out of our air.

17 I also appreciate that I can go over to
18 a switch and flip it and have a steady, constant
19 source of electricity. Look around this room.
20 We've got ample light. The temperature in here is
21 very pleasant and knowing the outside temperature
22 is in the 90s today I'd say that's because of the

1 air-conditioning and the electricity that powers
2 it.

3 There are other interests in this room
4 being presented today such as flat-top mining or
5 maybe even the very existence of coal power
6 plants. Those views may be very valid. However,
7 that's not the question before us today. There is
8 going to be regulation. We just need to decide
9 how it's going to be. I don't see a lot of
10 difference once we get down to the disposal. If
11 you've got a lined landfill, if you've got
12 leachate collection system, if you've got
13 monitoring, there's not a lot of difference
14 between a class C and a class D, the actual
15 physical disposal of any material put in it.
16 However, there is a big difference in the
17 permitting, the monitoring and the enforcement.

18 Now under current regulations the only
19 way the EPA can have oversight over this is to
20 classify it as a class C. I don't want to use the
21 word "overkill" but I believe we will be safe with
22 a Subtitle D, if we can have EPA oversight. So

1 basically I'm saying I don't like either of the
2 options being presented here today. I would like
3 to see a middle ground where there can be EPA
4 oversight because I believe when we hear private
5 citizens and regulators saying that they can't get
6 anything done on the state level I believe them.
7 But I don't believe we need to overreact to that
8 either so I want to see EPA oversight with class D
9 Subtitle. Thank you.

10 MR. BEHAN: Thank you. It's about 4:30
11 right now and we are running about 45 minutes or
12 so ahead of schedule. The next group I'm going to
13 be calling up fall into the 5:15 to 5:30 group,
14 just to let folks know. There are going to be
15 some people, some numbers I call out that aren't
16 here, and we'll come back and get them.

17 So is there anyone in the room that has
18 the number 108 or lower, that has not talked
19 today?

20 (No audible response.)

21 MR. BEHAN: Okay. 109, 110, and 111.
22 If 112 is here, please come forward. Is 183 here?

1 (No audible response.)

2 MR. BEHAN: 210 and 325. Could 109 come
3 to the podium, please?

4 MS. WATTS: Thank you. My name is April
5 Watts. I'm here on behalf of CROP PLUS, or
6 Concerned Residents Of Portland, New York and
7 People Like Us.

8 EPA must classify coal combustion
9 residuals under Subtitle C. I would like to speak
10 about New York State DEC -- Department of
11 Environmental Conservation policy and practices.
12 In 2007, CROP PLUS filed a Freedom of Information
13 Request to New York DEC and received the following
14 information: One, NRG Dunkirk Power did not file
15 any reports from 2002 thru 2007 for Coal ash use
16 under BUD 122-0-34. The information submitted
17 10-31-2008 was incomplete and contradictory to
18 previous records. Two, the DEC forms request
19 yearly quantity of solid waste beneficially used.
20 The form has a note, quote, "please attach to this
21 form all reporting information required by the
22 BUD." Nothing was attached to any files received

1 and no periodic testing was reported. Three, the
2 DEC form for the beneficial use of coal ash under
3 Regulation 360-1.15 has all cement, concrete and
4 concrete products listed under bottom ash and not
5 under fly ash. Both fly ash and bottom ash are
6 recorded as bottom ash on several reports.

7 In April 2009, Daniel David, Regional
8 Engineer for the Environmental Quality Region
9 responded in a letter to Chautauqua County
10 Executive Gregory Edwards, quote, "Sampling and
11 analysis is no longer required in order to
12 beneficially use coal ash as a traction agent."
13 Mr. Daniels referred to Regulation 360 and
14 predetermined BUDs that required no testing.
15 However, Bottom ash reuse as a traction agent is
16 being reported under BUD 122-0-34 which does
17 require testing.

18 Also, in April 2009 New York DEC
19 Commissioner Alexander Grannis responded to U.S.
20 Congressman Brian Higgins saying "The use of coal
21 combustion bottom ash by NRG Energy's Dunkirk
22 Power Facility is addressed by a 1993 DEC

1 regulation that supersedes the previously granted
2 BUD 122-0-34. This regulation does not require
3 NRG to undertake any chemical analysis."

4 Which is it? Is this BUD superseded by
5 or incorporated into the regulation? How can it
6 be superseded by Regulation 360 when Part A of the
7 regulation states: "Beneficial use determinations
8 granted by the department before the effective
9 date of this section shall remain in effect,
10 subject to all conditions contained therein,
11 unless specifically addressed by subsequent
12 department action." No subsequent department
13 action has been reported.

14 Forms and records need to be updated.
15 Coal combustion ash should not be reused in
16 residential areas without periodic testing to
17 guarantee human and environmental health and
18 safety.

19 In closing I emphasize that many state
20 regulations are not requiring proof of protection.
21 The EPA must regulate all coal waste under RCRA
22 Subtitle C including coal waste for questionable

1 beneficial use.

2 MR. BEHAN: Thank you. Number 110?

3 MR. BERGMAN: Good afternoon, and thank
4 you for the opportunity to speak to the EPA
5 regarding the proposed regulation for the disposal
6 of coal combustion residuals. I am Robert Bergman
7 and I am a chemist that has tested coal combustion
8 materials for 17 years. Today I would like to
9 provide the EPA the data it is asking for to make
10 their recommendation on sound science and not
11 emotional pleas from citizens who have never
12 handled coal combustion materials.

13 I would like to discuss the assertion
14 made during the August 12th EPA webinar that since
15 the European Union and Japan are able to
16 beneficially use 89 to 95 percent of coal
17 combustion materials, that the United States would
18 be able to increase beneficial use of coal
19 combustion materials even with the label of
20 special waste that is regulated under Subtitle C
21 of RCRA, and that no stigma would be attached
22 causing a decrease in the amount of CCRs that can

1 become reused instead of being disposed in
2 Subtitle C landfills.

3 Does the EPA realize that in Europe, the
4 89 percent beneficial use of CCRS is based solely
5 on bituminous coal combustion materials reused?
6 The other materials from brown coal, or lignite,
7 are not included in their calculations, even
8 though Brown coal is burned 4 times as much as
9 bituminous coal. The American Coal Ash
10 Association represents beneficial use of all
11 combustion materials produced regardless of
12 source, of material combusted, or the form the
13 material results in.

14 Further analysis of the coal ash
15 utilization charts provided by European Coal
16 Association and Japan Coal Energy Association
17 shows that by removing the utilization categories,
18 which would not be covered under the Bevill
19 exemption, the amount of beneficial use in Europe
20 would only be 19 percent for encapsulated concrete
21 and asphalt products. In Japan it would only be
22 four percent. This reduction in use is due to the

1 majority of their materials being used in
2 applications which is not clear if they would be
3 allowed under the proposed regulation, including
4 cement production, reclaiming coal mines, and
5 un-encapsulated uses.

6 Neither Europe nor Japan is beneficially
7 using coal ash as successfully as the United
8 States in concrete and asphalt products. If the
9 U.S. EPA is to take away un-encapsulated uses and
10 list CCRs under Subtitle C regulations, the amount
11 of coal ash that will be landfilled will far
12 eclipse any amount that will be beneficially used.

13 Thank you.

14 MR. BEHAN: Thank you. Number 111?

15 MS. YOUNG: My name is Elisa Young and
16 I'm a seventh generation (inaudible) County
17 resident. I live in southeastern Ohio, and I'm
18 here today because I on the border between region
19 three and region five. And one of the issues that
20 we have living on the border of those two regions
21 is that there is no overarching federal regulation
22 that protects my community equally. And what

1 you're seeing right there -- I went to the toxic
2 release inventory list to see how much beneficial
3 use is being dumped on us and there is no listing.
4 We have no toxic release inventory list with the
5 EPA but this is my solid evidence that it's been
6 received in my county because they bring it on and
7 trucks and they dump it on us every year. And
8 this is going in our fields, this is going into
9 our gardens. I have grit on my carpet that comes
10 back up from the roads, and so this is going
11 directly into our food chain.

12 These little jars here are two jars of
13 ginger cinnamon syrup that you are welcome to put
14 on your crepes and I want you to think about my
15 chickens when you do that. I can no longer
16 free-range my chickens. I like to do that because
17 it makes the omega-3 content higher in the eggs.
18 But now they're grazing in coal ash and I know
19 that and I can no longer let my chickens
20 free-range. Our cows are eating out of pastures
21 where this stuff is dumped and it seeps off, and
22 for the last 50 years nobody has tested the

1 sediment in our ponds or in our pastures to see
2 what the cumulative impacts are to our food chain.
3 So that whip cream you dollop on top of those
4 crepes made from those eggs from the chickens that
5 graze on coal ash, with those blueberries that
6 grew out of that ash that you have sitting there
7 in front of you, I want you to think about our
8 food chain.

9 I want Option C to be passed, but not
10 only put regulation around landfills because it's
11 only going to encourage the industry to find more
12 ways to dump this on us and put it into our homes
13 unregulated. I know people who work at those
14 cinderblock factories. They're telling me that
15 they're under more pressure to add more and more
16 of the coal combustion waste to the cinderblocks,
17 and they deteriorate more quickly because it
18 changes the matrix of those cinderblocks.

19 I want you to think about our food
20 chain, okay? The Environmental Integrity Project
21 did a report here and they showed that at one of
22 the four landfills -- I live at the center of the

1 second-largest concentration of coal-fired power
2 plants in the nation. The first is just up the
3 river from us at Morgantown, West Virginia. We
4 have four of them within a 10-mile radius of the
5 farm where I've lived for seven generations, our
6 family has lived there. And they found radiation
7 levels and alpha particles that were 1000 times
8 higher than what the EPA said was acceptable.
9 Those deer go on and off those sites, okay, so
10 it's not just was being dumped on us; it's what's
11 going in those landfills. There are deer going
12 back and forth. There are wild turkey. There are
13 fish. People still hunt and fish where I live and
14 we are not being protected.

15 I'm going to submit written comments in
16 writing because there's no way you can do anything
17 meaningful with three minutes. But I beg you,
18 please pass Option C with additional regulation
19 wrapped around beneficial use because it may be
20 beneficial for the industry but it is not
21 beneficial for us. I have lost multiple neighbors
22 to cancer. I've lost my dog to cancer. We have

1 livestock dying of cancer. We have deer getting
2 cancer. I've had melanoma and I have two more
3 precancerous conditions for breast cancer and
4 thyroid cancer. We have no family history of any
5 of those and there is no doubt in my mind that it
6 is a direct result from what we are being
7 inundated with.

8 Thank you.

9 MR. BEHAN: 325.

10 MR. DEAL: Hello, my name is Jeff Deal,
11 a concerned citizen and proud American. I'd like
12 to start off by saying that it's unconscionable
13 not to responsibly regulates the pollutant coal
14 ash, whose cancer-causing effects and
15 lifetime-shortening effects are well documented if
16 sadly not well known.

17 An industry that seeks to have
18 government obfuscate and shield their habitual
19 life-threatening pollution practices, so that the
20 industry may wholly profit, while at the same time
21 saddling the citizen taxpayer with as much of
22 their cost as possible, act as if they are

1 conducting the enterprise behind the Iron Curtain
2 of the 1960s and '70s and '80s instead of a
3 democracy that espouses profound respect for the
4 free market and free enterprise system.

5 While it's true that a profitable
6 industry once flourished lining our homes, schools
7 and marketplaces with the flame retardant and
8 cancer- causing agent, asbestos, we all celebrate
9 the fact that alternatives for this products were
10 identified, new jobs were created and their
11 illness-causing industrial practices we all once
12 supported no longer exist.

13 It is not the role of the EPA to assist,
14 support, and enable elite monopolistic slackers
15 who are seeking to escape the physical laws of
16 free-market economics and the consequences of
17 their dangerous actions. It is the role of the
18 EPA to safeguard the environment, the common
19 life-support system upon which all American lives
20 and marketplaces depend.

21 I look forward to supporting and working
22 with the EPA in safely and responsibly regulating

1 toxic coal ash as a hazardous-waste material, and
2 to thank you for your time and consideration in
3 this matter.

4 MR. BEHAN: Thank you. Numbers 113,
5 115, 116, 194, and 119. If 113 could come
6 straight to the podium that would be great.

7 MR. HALLMAN: Good afternoon. My name
8 is Chris Hallman. I am a Principal Environmental
9 Specialist with Duke Energy, testifying today on
10 behalf of Duke Energy. Duke Energy strongly
11 supports the development of Federal regulations
12 for coal combustion residuals under RCRA's
13 Subtitle D non-hazardous waste program. We
14 believe that regulation under Subtitle C is
15 unwarranted and we're not the only ones who think
16 so.

17 EPA's own significant study and past
18 rulemaking process also supports this approach.
19 The development of Subtitle D regulations would be
20 the appropriate outgrowth of EPA's two reports to
21 Congress and two final regulatory determinations
22 under the Bevill Amendment declaring that CCRs do

1 not warrant hazardous waste regulation under RCRA
2 Subtitle C.

3 Throughout EPA's 20 years of study, it
4 has consistently found that the Subtitle D
5 approach, with active state involvement, was the
6 appropriate regulatory course for CCRs. In
7 addition, various state and federal agencies,
8 members of academia, and many others have studied
9 CCRs for nearly three decades. These entities
10 evaluated CCRs for toxicity levels and found them
11 to be well below the criteria that would require a
12 hazardous waste designation.

13 First in its 1993 CCR Regulatory
14 Determination and again in its second report to
15 Congress in 1999, EPA concluded that RCRA Subtitle
16 D is more appropriate for addressing the limited
17 human health and environmental risks that may be
18 associated with disposal of these wastes.

19 EPA reaffirmed the appropriateness of
20 the Subtitle D option in its 2000 CCR regulatory
21 determination, concluding that the Subtitle D
22 regulations are the most appropriate mechanism for

1 ensuring that CCRs disposed in landfills and
2 surface impoundments are managed safely. EPA's
3 decisive factors in reaching its final
4 determination that CCRs do not warrant regulation
5 as a hazardous waste include one, CCRs rarely
6 exhibit a hazardous waste characteristic; two,
7 trends demonstrate CCR disposal and utilization
8 practices are improving; and three, the current
9 and potential beneficial use of CCRs are important
10 advantages.

11 Since the initiation of this rulemaking
12 effort, an overwhelming number of entities have
13 gone on record supporting a non-hazardous waste
14 designation. These include more than two dozen
15 state environmental protection agencies, various
16 Federal agencies including the Department of
17 Energy, a bipartisan group of 165 members of
18 Congress, and 45 US senators.

19 The characteristics of CCRs have not
20 changed, and there is no real science to support a
21 hazardous designation. Ruling as such will raise
22 electric costs to consumers and jeopardize CCR

1 re-use without delivering additional environmental
2 benefit. The Subtitle D option provides the only
3 reasonable and lawful regulatory approach for
4 these materials under RCRA.

5 Thank You.

6 MR. BEHAN: Thank you. Number 116.

7 MR. BLUNDEN: Thank you for holding
8 these hearings and allowing me to speak today. I
9 appreciate your stamina.

10 I am here today representing my wife
11 Ginger who has cancers and my four beautiful
12 grand-daughters who have every right to expect a
13 clean and healthy future.

14 Burning coal to make electricity is a
15 primitive and dirty business. It is an industry
16 in decline. There are proven, cleaner, modern
17 technologies available to produce electricity in
18 the form of solar, wind, and tomorrow it will be
19 the norm. The way to move these clean
20 technologies forward is to get all of the costs on
21 the table, the cost of the coal burning industries
22 on the table. This means the cost of cleaning up

1 the coal ash waste. The evidence is indisputable
2 that the concentrated storage of coal ash
3 represents a public health hazard. Selenium,
4 arsenic, and mercury are all present in coal ash.
5 They have the very potential of leaching into
6 public water systems, the groundwater, and rivers.
7 As witnessed by the disastrous TVA spill of fly
8 ash in December of 2008, there is also the very
9 real potential for catastrophic spills.

10 Yes, there will be dollar costs
11 associated the cleanup and yes, these costs will
12 be passed on to the consumer. The clean-up has
13 been estimated to add one percent to the cost of
14 electricity. One dollar on a hundred dollars to
15 your power bill. The costs of cleanup are not
16 going to magically disappear. They will be paid
17 now by ratepayers or later as superfund sites by
18 taxpayers. The cost should be paid by consumers
19 now because it is a real cost of producing
20 electricity and will make the clean technologies
21 more competitive once all of the costs are on the
22 table. As Americans we demand a clean environment

1 in which to raise our families and I am confident
2 all of us are willing to pay for that.

3 As a (inaudible) architect, I don't
4 believe that the stigma associated with this
5 hazardous waste is going to stop it from being
6 recycled. I say that because if you look at
7 vinyl, vinyl has really hazardous materials that
8 go into it. But still, vinyl is on the market and
9 people are buying it all the time.

10 Declaring coal ash as a hazardous waste
11 is the only viable answer. Coal ash is hazardous
12 waste. It is EPA's environmental protection
13 responsibility to call it what it is. We the
14 public expect no less.

15 Historically this has been called
16 progress.

17 MR. BEHAN: 119.

18 MS. STROUP: Hi, my name is Mary Stroup.
19 I'm from Winston-Salem, North Carolina. First,
20 I'd like to express my appreciation for the
21 Environmental Protection Agency having these
22 hearings today. I decided to come and speak when

1 I saw on the Sierra Club website that these
2 hearings were going to be in Charlotte also, as
3 opposed to around other places in the country.
4 And as I was registering to speak there was a
5 blank to fill in for affiliation. I typed in
6 "concerned citizen" because that's what I am.

7 Another thing that the website said
8 about speaking at this hearing was to smile and
9 have fun. I don't want to smile. I'm mad. I'm
10 angry that we're even having the need to have
11 these discussions and this hearing. I don't live
12 near a coal ash disposal site and as of this
13 moment, it isn't affecting me directly. But in
14 the end it affects everyone.

15 I've watched a lot of documentaries
16 about the environmental effects of dumping this
17 poison on our land and into our rivers and I've
18 done a lot of reading and a lot of research. It's
19 dramatic what happens in the rivers. There's fish
20 kills and wildlife that dies from drinking the
21 water, not to mention the causing of cancer to
22 people who live in the area. It's loaded with

1 known carcinogens.

2 I have to wonder how people from the
3 coal industry can look at themselves in their
4 mirrors everyday knowing that they're exposing our
5 water, our wildlife, and in the end human beings
6 to this poison. And I don't believe for one
7 second that they don't know that what they're
8 doing is poisoning everything in the planet.

9 Fresh drinking water is a limited
10 resource. There are already places in the world
11 that are running out and have to search every day
12 for enough water to stay alive and yet we live in
13 a country where an industry can leach
14 cancer-causing chemicals into our water. How is
15 this even possible? What kind of minds think that
16 this is acceptable? We live in an ecosystem, a
17 system. What affects one thing affects all
18 things.

19 My father was a career military man.
20 I'm very lucky. I grew up living all over the
21 world. We camped everywhere we went. We loved to
22 be in nature, a part of it. When you grow up like

1 that, you develop a real love for nature and have
2 a burden to protect it. Humans were given an
3 unbelievable gift in this planet and we are not
4 very good stewards of it. It literally makes me
5 sick to see what humans are doing to this planet.
6 EPA, please do your job. Protect the environment
7 and put in place enforceable safeguards to stop
8 the coal industry from poisoning us and our
9 planet.

10 Thank you.

11 MR. BEHAN: Thank you. 194.

12 MS. LOGUE: Good afternoon. My name is
13 Lynnsy Logue. I'm a 71-year-old voice of cancer.
14 Thank you for being here, because I didn't think I
15 would be here last year. So I have spent the last
16 year in chemo, and then radiation, and then chemo,
17 and then surgery, and thank God I am here today.

18 My focus is on finding the cause,
19 because I ate organic food, drank filtered water,
20 I'm 71 years old, swim 30 laps, swim four miles;
21 you couldn't be more healthy. But when I was
22 handed the diagnosis of "you have cancer," I

1 thought how could this happen, and of course why
2 not? We live in a toxic environment.

3 I'm very passionate about the road ahead
4 of me, and this is what I have to say today:
5 Happy birthday Molly Sue. With any luck, you'll
6 live to maybe 43 or two. Depends on where cancer
7 finds you. An easy task these days; divide and
8 conquer. The cells sneak out in quick disguises,
9 no surprises. They are often missed,
10 non-detectable, but I'm not sure what gives me
11 pause is the cause of a rampant disease in
12 epidemic proportions, horrifying tens of thousands
13 who fear a death with insufferable pain again and
14 again and willingly accept the barbaric statement,
15 their treatments are poison and death rays. Some
16 say it might stop the man in the suit, cancer CEO.
17 The man in the suit, you know, the man with his
18 hand out for \$100 a pill, or tens of thousands for
19 radiation, or thousands of thousands for a CRT and
20 MRI, CT, PAP, and all the letters that stand for
21 ways to charge intensive fees, while shiving that
22 5 billion is spent for R&D. Since 1970, 5

1 billion. And yet 110 billion pieces of silver
2 every year is spent for cancer treatments. Where
3 is the search for cause? Because it's a cause we
4 name, the business remains, change, not the same
5 old game, not the only game in town. The man in
6 the suit greases the palm of the man in the white
7 coat. The truth of degrees that carry the disease
8 over the heads with language that is over our
9 heads, while you and I lay dying, smiling and
10 saying, we will fight because we are only just
11 learning that cancer is immortal. It is simple to
12 see what envelops me is a wave of incredibility.
13 Clean air and clean water, clean food and clean
14 land, no small percentages of acceptable mercury,
15 no heed for a trace of lead. My friends and
16 family are dying, my dog is dead. What gives me
17 pause is we conquer not cause but continue to pay
18 and to pay and pave the way for generations of men
19 in suits depleting our savings, sucking our life
20 force to build and maintain a battlefield for cash
21 registers and accountants. The invasion is
22 invisible as long as we are silent. Happy

1 birthday, Molly Sue. Are you listening?

2 MR. BEHAN: The persons with numbers
3 117, 118, 120, 122 and 123 come forward, please.
4 Number 117, please.

5 MR. MCCABE: Good afternoon. My name is
6 Bill McCabe, and I am testifying on behalf of Duke
7 Energy as manager of Duke Energy's Waste
8 Remediation Group. Duke Energy strongly supports
9 developing federal regulations for coal combustion
10 residuals under RCRA's Subtitle D non-hazardous
11 waste program. Opponents of Subtitle D say this
12 option is a free ride for electric utilities.
13 However, the reality is Subtitle D raises the bar
14 considerably in terms of retrofitting and closing
15 CCR impoundments, although the accelerated closure
16 schedules are impractical and likely not possible
17 the way currently proposed.

18 The Subtitle D proposal requires that
19 unlined impoundments no longer be used five years
20 after the rule is finalized. It also requires
21 that impoundments be officially closed within 180
22 days after closure of the impoundment begins.

1 Both of these time frames are unrealistic, given
2 that closing these ponds safely from an
3 engineering perspective will be very challenging.

4 The cost to comply with the requirements
5 (inaudible) unlined impoundments will drive most
6 plants with these impoundments to either retire or
7 convert to dry CCR handling systems at landfill
8 disposal facilities. New landfills will have to
9 be sited, designed, and constructed prior to
10 beginning the pond closure. Given the number of
11 new landfills that will be required, it is
12 unlikely that those could be ready in time.

13 If these were hazardous waste landfills,
14 as required under Subtitle C hazardous waste
15 program, even more time would be needed. Assuming
16 that a hazardous waste landfill could be
17 successfully sited and permitted.

18 Also, the immediate and significant
19 increase in demand for dry handling systems across
20 the country will result in lengthy procurement and
21 installation time frames, making the five-year
22 deadline impractical, while impacting power plant

1 availability.

2 The requirement to close surface
3 impoundments within 180 days is also not realistic
4 given the time needed to de-water the unit,
5 construct the cap, and to install the necessary
6 stormwater controls while complying with the NPDES
7 permits.

8 EPA should consider closure to start
9 within 30 days of final receipt of waste, but the
10 implementation of a closure plan and completion of
11 construction should be determined by best
12 engineering practices.

13 The Subtitle D Prime option, with
14 appropriate adjustments, best balances clean
15 energy with affordability and reliability.
16 Adopting the Subtitle D Prime option will achieve
17 the same long-term environmental goals on a more
18 realistic time frame. With a reasonable,
19 science-based approach, we can design federal
20 regulations that ensure the safe management of
21 CCRs without significantly raising costs for
22 customers and jeopardizing national electric

1 reliability.

2 Thank you.

3 MR. BEHAN: Thank you. Number 118?

4 MR. IRVINE: Hello, my name is Jim
5 Irvine. I'm the president of a small recycling
6 business named Fly Ash Direct. Fly Ash Direct is
7 based in Cincinnati, Ohio and we've been in
8 business for over 20 years. We have multiple
9 offices throughout the Midwest. We employ
10 approximately 35 people. Our primary business
11 purpose is to develop beneficial markets for coal
12 combustion residuals including fly ash, bottom
13 ash, and synthetic gypsum. My company and our
14 industry has worked very hard over the last
15 several decades to develop a comprehensive list of
16 products that use coal residuals as beneficial
17 construction materials. These products are widely
18 utilized to manufacture many products that we
19 live, work, and play within.

20 At no time in history has there been a
21 hazardous, dangerous, harmful or unsafe connection
22 between coal residuals in any of the products that

1 we use to manufacture. These products come into
2 daily contact with humans, existing today in our
3 basement foundations, roof shingles, drywall,
4 roads and bridges, dams, water treatment plants,
5 so forth and so on, in many other applications.
6 We most certainly would have discovered by now if
7 these materials are harmful in any way whatsoever.
8 Declaring coal residuals hazardous at this point
9 in my opinion is to declare the entire world
10 landscape a wasteland.

11 Until now the U.S. government and the U.S.
12 EPA have encouraged recycling coal residuals as an
13 environmentally preferable alternative to
14 disposal. It is well-documented that this
15 recycling activity saves precious natural
16 resources, reduces greenhouse gas emissions
17 through cement reduction. Our government has
18 analyzed the science multiple times in the past
19 under multiple administrations and every time
20 they've determined these materials do not warrant
21 hazardous classification.

22 I vehemently oppose any designation by

1 EPA which would designate coal residuals as
2 hazardous waste under RCRA Subtitle C. Any such
3 association will have a profound negative effect
4 on our future ability to manufacture quality
5 construction products, unnecessarily increase our
6 utility bills, and it will eliminate a significant
7 US recycling success story. My industry has
8 surveyed our customers who utilize coal residuals
9 and they are firm in their position that if the US
10 EPA pursues a Subtitle C approach they will
11 discontinue their use of these materials in the
12 future. It is my understanding that ASTM has a
13 similar position.

14 In conclusion I do not oppose federal
15 oversight with regard to solid waste disposal
16 setting forth minimum engineering standards which
17 safeguard our water and air. I do specifically
18 oppose a Subtitle C approach which unnecessarily
19 associates these valuable materials as hazardous,
20 for the reasons stated.

21 Thanks for having me.

22 MR. BEHAN: Number 120.

1 MR. DANIELS: Hello, and thanks to
2 everyone who's here. A lot of passionate
3 discussion. I appreciate being part of this
4 process. Thank you very much to the EPA and
5 allowing this to happen. It's very late in the
6 day so I'll get right to it. I see I've got a
7 nice clock here to remind me how much time I've
8 got to go.

9 My name is John Daniels and I'm in my
10 tenth year on the faculty at UNC Charlotte. I
11 spent three years recently at the U.S. National
12 Science Foundation. I'm a registered professional
13 engineer in both North Carolina and the state of
14 Massachusetts.

15 And I guess a couple of my thoughts that
16 I want to put forth is, first, coal fly ash is
17 really very much similar to regular soil; dirt
18 that is right outside this building here. If you
19 were to look at the mineralogical composition,
20 look at x-ray of the fraction, look at x-ray of
21 fluorescence, look at whatever technique you want
22 and look at the technical composition, by and

1 large they're essentially the same in terms of
2 silica, alumina, iron oxides, lime and so on.
3 Sure enough, there are trace metals with fly ash
4 and, in fact, you can have trace metals with dirt
5 as well. Ash can also absorb contaminants and so
6 can soil. So these things can work in different
7 ways. But let's just accept the fact that ash can
8 leach contaminants. Let's manage this and manage
9 it in a Subtitle D program. This works very well
10 in municipal solid waste. And I would invite
11 folks to look at typical leachate characteristics
12 for municipal solid waste. And, you know, a lot
13 of the emotion and a lot of the arguments for how
14 many times higher than a groundwater standard
15 you'll find in coal ash leachate, you can find a
16 similar thing if you look at municipal solid waste
17 leachate. And, yet, we are able to successfully
18 manage municipal solid waste through Subtitle D.
19 So if it works for MSW, it will certainly work for
20 coal ash.

21 I'd also point out that it's far more
22 compatible in terms of reuse of this material,

1 particularly at this point in history for poise,
2 for major investments in infrastructure. Now is
3 not the time to take off 50 million tons of
4 material and take it and simply hide it and not
5 use it at a time where we need so much more virgin
6 materials for new bridges, new roads and so on.
7 We simply need this material. It's far more
8 sustainable to use that.

9 I guess my follow-up point would be, I'm
10 very disingenuous to use this as an opportunity to
11 bash the notion of coal burning. Again, having
12 spent three years at NSF, I appreciate the fact
13 that it's wonderful that we can take tax dollars
14 and invest it in research; research that is needed
15 so that we can have new technologies, alternative
16 energy, energy efficiency and so on. We need
17 these things. And to get to that point, we need
18 research to invest there, but someone's got to pay
19 for that research. It requires an economy which
20 can support this. And so, right now we have a
21 coal-based economy, so the idea would be that the
22 road to a fossil fuel-free future is really paved

1 with coal.

2 And once we are able to make these
3 investments, we can then transition to a more
4 energy efficient economy.

5 So with that, I appreciate your time,
6 and enjoy.

7 MR. BEHAN: Thank you. 122.

8 MS. DIAZ: Thank you. I'm Sandra Diaz
9 with Appalachian Voices. And I wanted to thank
10 the EPA and everyone else who's come out today to
11 talk on this very important topic.

12 I personally came to realize the massive
13 destruction that coal and its waste by-products
14 can cause. I was actually one of the first people
15 to commute into the massive coal ash spill in
16 Harriman, Tennessee to assist with water testing
17 in December of 2008. What I saw before me was
18 what once was a free- flowing river that had
19 become a toxic coal ash pit filled with dead fish.
20 And the test results we collected from that
21 sampling were not a surprise. We are still --
22 very frightening to see. The presence of toxic

1 heavy metals like arsenic, barium, cadmium, lead
2 and selenium were at alarming levels. And the
3 people's lives that lived there were forever
4 impacted -- the many adults and children
5 experiencing health issues; many whose homes are
6 now part of a toxic site.

7 And while the terrible incident in
8 Tennessee is just an extreme case of a damage that
9 coal ash can bring to a community, it thankfully
10 woke us up to the more insidious danger that coal
11 ash can bring by slowly leaching toxic heavy
12 metals into groundwater supplies over time.

13 We know that coal ash is a toxic
14 substance. The EPA science says so. In North
15 Carolina alone, 13 massive coal ash ponds are
16 currently leaking heavy metals. Of course
17 industry is opposed to treating coal ash as the
18 hazardous waste it is. If this were a hearing
19 about mercury, the industry would be arguing
20 against regulating mercury. The industry's
21 motivation is their bottom line. Why would they
22 want us to pay for their waste when they can get

1 the public to do so? Who is looking out for the
2 public interest? It is up to the EPA to do so;
3 the Environmental Protection Agency.

4 I ask that the EPA protect human health
5 by regarding their own science and regulating coal
6 ash under Subtitle C in order to provide strong
7 Federal oversight to this known toxic substance.

8 Thank you.

9 MR. BEHAN: Thank you. Number 23.

10 MS. RHODES: Yes. I'm Suzanne Rhodes.
11 And I'm representing the League of Women Voters of
12 Columbia, South Carolina, and I thank you for your
13 attentiveness. I can't believe what a job you've
14 got today.

15 I live a couple miles from the McMeekin
16 plant, Lake Murray Dam. There's a coal ash pile
17 there. It's about 58 years old, and it feeds into
18 the Congaree National Park through -- I don't mean
19 the -- coal ash is at the headwaters of the river
20 that runs into Congaree National Park. The park
21 and the Saluta River, as well as the citizens of
22 the area, all deserve long-range protection.

1 It's been very interesting today hearing
2 the variety of remarks, and I've learned a lot.
3 But I didn't think about it much when the upgrade
4 of the coal plant -- and I no longer had to clean
5 up the porch furniture. I never thought about the
6 ash. If we never get to clean coal, the ash is
7 going to be worse and we've got to start now
8 preparing for that.

9 And I've heard a lot of information
10 today about leaking leachate, and I'm surprised I
11 haven't heard anyone criticize, in harm's way, the
12 data from the Environmental Integrity Project that
13 cited -- I can't remember -- a couple hundred
14 cases of toxic leaks from coal ash plants. Fly
15 ash may be different. I've been disappointed with
16 a fact-free kind of a campaign that -- we've
17 talked a lot about jobs and recycling. And I've
18 been introduced to stigma. I don't know of John
19 Reaky. I've never heard of N.C. Warran, but I
20 think he nailed it. Stigma is not a regulatory
21 issue; it's an educational issue and we can
22 certainly solve it.

1 I was also interested to hear about the
2 Subpart K. I think federal Subpart C is what --
3 the direction we probably need to go. We need to
4 get together and avoid future problems and
5 someone's got to figure out a way to test the ash
6 and the coal ash -- fly ash, coal ash products,
7 that are, in fact, usable as product, but they
8 need to be tested. And I'm surprised that
9 nobody's paid attention to EPA's statement that's
10 in the back of your handout. I guess I don't have
11 it -- yeah, page 2 -- for the metal exemptions,
12 which they pretty much tell you they are not
13 talking about focusing on fly ash, they are
14 talking about testing.

15 Obviously, this is going to cost money,
16 and their permits are running the fees, and I
17 think the ash program should be also.

18 Thank you very much.

19 MR. BEHAN: Thank you. Just to let
20 folks know in the room, we're running about an
21 hour ahead of schedule from what was published for
22 the speaker list online. The next group, I show

1 that we don't have anyone here; that's 125, 126,
2 127, and 128. Are any of those numbers here? Is
3 there anyone in the room that has a number 128 and
4 lower that has not spoken today?

5 MS. ZIRKLE: I have 114.

6 MR. BEHAN: You have 114? 114 can come
7 forward. 129, 130, 131, are those folks here?

8 (No audible response.)

9 MR. BEHAN: I will call again. We are
10 running ahead of schedule so some people might
11 come at the assigned time, so we will loop back.
12 114, go ahead, ma'am.

13 MS. ZIRKLE: Hi. My name is Lisa
14 Zirkle, and I thank you for your patience and for
15 listening to us all. I appreciate your attention
16 during this very long day.

17 I'd like you to consider the undue
18 influence Duke Energy has in our city and state.
19 We lost serious drivers of the local economy when
20 Wachovia and Bank of America tanked. The only
21 game left in town is Duke. They make many large
22 contributions to our community's pet projects.

1 Many Charlotte residents are employed by them
2 and/or own their stock. The companies we do have
3 left want Duke as a customer or a partner, which
4 leaves few Charlotteans willing to challenge them
5 or speak out against them.

6 At the State level, Duke's lawyers and
7 consultants write their own regulations, as in the
8 case of North Carolina General Statute 130A-295.4
9 regarding combustion products landfills. This
10 statute doesn't even require coal ash ponds to be
11 monitored for leakage. A frightening thought when
12 you consider there are a dozen high-hazard ponds
13 filled with carcinogenic toxins in North Carolina.
14 Four are in Charlotte and two are located next to
15 Mountain Island Lake, the source of drinking water
16 for over three- quarter million people; our
17 drinking water.

18 Duke Energy's known data shows the
19 groundwater beneath every unlined coal ash pond is
20 contaminated. North Carolina's Department of
21 Environment and Natural Resources Solid Waste Bill
22 states groundwater is the source of drinking water

1 for approximately half the population of the
2 state. On the Federal level, Duke spent \$3.29
3 million in lobbying money the first six months of
4 this year. That doesn't include spending on the
5 state level. A Fortune 500 company throwing
6 around that much money easily buys influence and
7 complacency (sic).

8 The last point I'd like to make is
9 three; these three (indicating). These are my
10 children, now middle and high school students. I
11 bring this picture because they have been drinking
12 the water from Mountain Island Lake all the years
13 in between then and now; the same water Duke dumps
14 one to three pounds of arsenic in every day.
15 Water from the lake sediment contains arsenic,
16 plus barium, lead, selenium, and mercury.

17 Our local officials have failed in
18 protecting our drinking water. In fact, they just
19 began testing for arsenic in June of last year.

20 In order to effectively regulate a
21 company as influential as Duke, their pain in
22 doing what is wrong must be greater than their

1 gain in doing what is easy.

2 I urge you to apply the force of
3 consistent mandatory Federal regulation -- the
4 pain, if you will. I urge you to adopt Subtitle
5 C.

6 Thank you for your time.

7 MR. BEHAN: Thank you. Are numbers 133,
8 134 here?

9 (No audible response.)

10 MR. BEHAN: 190, 192, 198, come forward
11 if you have any of those numbers. If 133 could
12 come to the podium, that would be great.

13 MS. BOWMAN: My name is Rhiannon Bowman.
14 I'm an independent journalist. And as a profile,
15 I live about a mile from the two unlined
16 high-hazard coal ash ponds at the edge of Mountain
17 Island Lake, also known as Charlotte Metro -- the
18 Charlotte Metro area's drinking water.

19 I've spent a lot of time researching and
20 writing about this pond. But I'm actually here to
21 talk to you about how your proposed regulatory
22 options affect the people in my home state of

1 Alabama.

2 Historically, the state dumps hazardous
3 and nonhazardous waste much closer to poor people
4 than to middle-class or rich people. Under
5 Subtitle D, your proposed regulation is enforced
6 only through citizen lawsuits. Now, that doesn't
7 make any sense to me. We're going to dump waste
8 next to people with little money and dare them to
9 challenge us; people who likely can't afford to do
10 much more than beg and pray.

11 As a society, we must do a better job of
12 protecting every element of our population. The
13 pressing enforcement through citizen lawsuits is
14 cost prohibitive for the very people who we're
15 expecting to shoulder the burden of our
16 electricity addiction.

17 I must support the institution of
18 Subtitle C. The poor folks in Alabama deserve
19 better. Every citizen in the U.S. deserves to
20 enjoy true regulatory protection from your agency.
21 It's not your job to worry about the coal
22 industry's profits; it's your job to protect us

1 and our land. They are in the business of making
2 money to overcome any hurdle put in their way of
3 making their shareholders happy.

4 Further, your own numbers indicate the
5 health benefits outweigh the cost of cleanup many
6 times over.

7 Thank you.

8 MR. BEHAN: Thank you. 134, please.
9 190.

10 MS. CORBETT: Good afternoon. My name
11 is Susan Corbett. I am the chair of the South
12 Carolina Chapter of the Sierra Club. I'm here
13 today to express our support for the
14 classification of coal ash and Subtitle C.

15 In South Carolina, as you've heard from
16 previous folks, we have a serious problem. I
17 think there was a contingency here this morning
18 from the area around Columbia where I live. She
19 had a little bottle of water. I was at a DHEC
20 hearing a few months ago where we challenged their
21 attempt to deregulate or to lower these standards
22 on arsenic being released from the SCANA coal ash

1 pond there in lower Richland County. I basically
2 heard the DHEC officials say, "The dilution is the
3 solution to pollution." Over 200 folks turned up
4 at that hearing in Lower Richland County to speak
5 out against the amount of arsenic and other toxins
6 being dumped into the watery river from that coal
7 ash. There are no markings in that river; people
8 can paddle and fish right up at the area. I think
9 Representative James Smith was familiar. He was
10 here this morning, talked about the amount of
11 seepage seeping under that pond into the watery
12 river.

13 The sad fact is, the Department of
14 Health and Environmental Control in South Carolina
15 does not have the regulatory backbone to stand up
16 to SCANA and other utilities that are managing
17 these ponds, or not managing these ponds. There
18 have been numerous citations over the years. They
19 have had years of this going on, and virtually
20 nothing has been done to change the pattern of
21 leakage.

22 We also were at the -- Congressman

1 Clyburn hosted an EPA hearing in Columbia that
2 Lisa Jackson was at. The same folks that were at
3 the coal ash pond showed up at that hearing and
4 spoke out again. Seems to be an environmental
5 justice issue.

6 A lot of these leaking sites are in
7 African- American communities and communities that
8 are disenfranchised with public input, and they
9 are sharing more share of the burden on these
10 low-income areas.

11 We urge you to help us. Our state is
12 being cut back. DHEC is being cut to the bare
13 bones. We don't have the staff. We don't have
14 the regulatory will -- the legislative or
15 political will to stand up to utilities and clean
16 up these leaking ponds. We need your help. We
17 appreciate what you can do.

18 Thank you.

19 MR. BEHAN: Thank you. 192.

20 MS. CUNNINGHAM: Good evening. My name
21 is Darlene Cunningham, and I am with a group
22 called Concerned Citizens of Giles County,

1 Virginia.

2 I live in Giles County, a Southwestern
3 county in Virginia where a division of American
4 Electric Power and a 501(c)(3) public school
5 foundation have teamed to construct an unlined fly
6 ash dump right on the edge of the New River.
7 Citizens of my county have been denied a right to
8 a public hearing to oppose this. Actually, my
9 state DEQ allows such action calling it
10 "beneficial use." That's right. Pouring tons of
11 toxic ash in an unlined site right by the river
12 and calling it "fill" is okay in my state. Such
13 is the regulation in Virginia.

14 The notion that states and utilities are
15 effectively regulating coal waste is grossly
16 erroneous and is being circulated by those who
17 stand to profit if the status quo is maintained as
18 described in Subtitle D. These hearings would not
19 be necessary if states and industry were generally
20 concerned about protection of our water and if
21 they were disposing of their waste responsibly.
22 The fact is there must be effective, enforceable

1 Federal regulation for coal waste if public health
2 is to be valued over corporate profits. Subtitle
3 C is the only rational choice.

4 It's time to listen to the citizens
5 whose lives have been impacted by illnesses,
6 contaminated wells, loss of property, loss of
7 property value due to this toxic waste. It's time
8 to listen to the biologists. It's time to listen
9 to the riverkeepers. It's time to take seriously
10 the numerous studies, including EPA's own risk
11 assessment which has made very clear the dangers
12 of coal waste. After decades of debate, decades
13 of intense lobbying for industry and the decades
14 of inaction, it is now time to regulate coal waste
15 for what it is. It is a clear and present danger
16 to public health.

17 Thank you.

18 MR. BEHAN: Thank you. 198.

19 MR. LANDRETH: My name is Jim Landreth,
20 vice president of South Carolina Electric and Gas
21 Fossil Hydrogeneration. Thank you for the
22 opportunity to be here today.

1 Since the dawn of the industrial
2 revolution, our nation has prospered because of
3 our ability to harness energy; more specifically,
4 converting energy from flowing rivers, burning
5 fossil fuels, or even splitting the atoms has
6 allowed the United States to move forward from a
7 mostly agrarian society into an industrial and
8 business world leader.

9 Electricity is the energy source
10 necessary to support the critical infrastructure
11 in our communities. This is essential to the
12 economic health and viability of our country and
13 is used by each and every one of us. As we near
14 the close of the first decade of the 21st century,
15 coal-fired generation continues to account for
16 more than 50 percent of the electricity produced
17 throughout the United States. It has been
18 invaluable for the past century and a half and
19 likely to be with us many, many years more.

20 Coal-fired generation is not the same as
21 it was 50 years ago, 20 years ago, or even five
22 years ago. Throughout history, engineering and

1 industry experts have focused on improving the
2 processes to produce electricity for fossil fuels.
3 South Carolina Electric and Gas, in specific, has
4 installed environmental upgrades which have
5 reduced SO2 by more than 70 percent -- excuse me
6 -- 60 percent, oxides of nitrogen by 70 percent
7 and more than 40 percent of the mercury emissions
8 in our plants.

9 These ongoing series of upgrades has
10 allowed SCE&G to meet the growing demands more
11 efficiently while reducing the by-products as
12 measured on a per unit basis. Business and
13 industry does solve problems. South Carolina
14 Electric and Gas was a pioneer within the
15 industry, and we developed and installed the first
16 commercialized carbon burnout unit to improve the
17 beneficial use of coal combustion by- products,
18 specifically fly ash. This achievement re-burns
19 the coal ash recovering the residual fuel content
20 and producing high quality by-products for the
21 cement industry. We have two of these units
22 remaining on our system.

1 During these hearings, you have recorded
2 many positions regarding the future of coal
3 combustion by-products. The key points of my
4 message today are: When industry recognizes
5 issues collectively, they have demonstrated the
6 ability to solve problems. Rather than change the
7 classification of coal combustion by-products to
8 hazardous waste and arrest the future of technical
9 developments of beneficial use, the EPA should
10 maintain the current classification.

11 Three, industry -- we need to implement
12 solutions that will encourage industry to further
13 enhance the development -- technical developments
14 to increase the beneficial use of these
15 by-products. Remember, industry solves problems.

16 In summary, our goal is not to regulate
17 coal-fired generation out of existence, but rather
18 to collectively find solutions that will allow us
19 to continue to use this abundant and expensive and
20 domestically-created energy source.

21 Thank you.

22 MR. BEHAN: Thank you. Number 134,

1 number 136, numbers 141, 146, 147, 148, 149. Does
2 anyone have a number here 161 and below? 161.
3 The gentleman in the back, what number do you
4 have, sir?

5 SPEAKER: 156.

6 MR. BEHAN: 156. 136.

7 MS. HARTZELL: Thank you. My name is
8 Margaret Hartzell, and I'm the policy advocate
9 with Environment North Carolina. We're a
10 statewide citizen-based environmental advocacy
11 organization with thousands of members across the
12 state; many of them signing a petition to EPA
13 asking you to regulate coal ash as a hazardous
14 pollutant. So I am speaking for them tonight as
15 well.

16 I know that it's been said many times
17 before today that coal ash is toxic. It is proven
18 to contain arsenic, lead, mercury and cadmium.
19 It's worth noting that coal plants are the second
20 largest source of industrial waste in the country,
21 and the pollution that they generate is
22 staggering. Every year coal- fired power plants

1 generate roughly 140 million tons of coal ash
2 containing toxic chemicals, and all of this waste
3 has to go somewhere.

4 Here in North Carolina we have more
5 high- hazard ponds than any other state in the
6 country. Water contamination from coal ash has
7 already been reported in Buncombe, Robeson, Nash
8 and Northampton Counties.

9 There's little to no regulation of coal
10 ash at the State level, and unfortunately, that is
11 unlikely to change anytime soon. But I can assure
12 you that that's not for a lack of trying by
13 advocates and elected officials.

14 Due to the lack of state regulation, it
15 is absolutely critical that the EPA regulate toxic
16 coal ash as a hazardous waste under Subtitle C,
17 prevent new ponds and phase out existing ones. It
18 is clear that this hearing has proven that North
19 Carolinians favor clean water, not dirty coal.

20 MR. BEHAN: Thank you. 161.

21 MS. LEMAS: Hello. My name is Brenda
22 Lemas, and I belong to the Sierra Club. I'm

1 representing myself today.

2 After listening to all of you, I realize
3 that this is a problem that has become very
4 personal to all of us. Coal ash is a problem, and
5 I think that we need to -- we need to Federally --
6 how do you say that -- I'm getting notes. I think
7 that we need to regulate coal ash procedures.
8 These are toxic and it is -- I don't think that it
9 is appropriate to say -- to negate this when there
10 are so many people who have come over here
11 testifying personally what has happened to them.
12 This needs to be regulated. I think it has to be
13 done under Subtitle C. The EPA has to enforce
14 this.

15 I also think that if there can be a
16 possibility of recycling coal ash, it should be
17 done as long as it is done safely for all of us,
18 and presently and for the future. I also think
19 that coal ash -- we have to actually get new
20 resources, find more resources to do this as
21 opposed to be dwelling on the same thing on coal
22 combustion. I think that we should end this

1 situation where we're all continuously depending
2 on coal. Coal is not a good source of energy that
3 is nontoxic and that is not going to put us in
4 danger.

5 Also, when you say -- when we think of
6 coal being taken as a resource after wiping out a
7 whole mountain with total disregard of wildlife
8 that is there -- the plants, the trees -- I don't
9 think that this is ethical. I don't think that
10 this is moral. A lady over there, Terry,
11 explained to us what happens with the frogs.

12 They are telling us that there is
13 something really wrong with our environment.
14 Ignoring this is a crime. And this is what the
15 coal industry is doing. I say that it is time to
16 end this coal industry. They are only worried
17 about their benefit, their personal financial
18 benefits and their personal profits. Well, we
19 need to protect the planet. If we don't protect
20 the planet, we will not have any kind of financial
21 benefits for coal anyway.

22 So I think that we have to do something

1 about this and that the answer is to end the coal
2 industry. We should not be wasting our time right
3 now dealing with all this -- excuse the word --
4 BS.

5 Thank you.

6 MR. BEHAN: Thank you. 156.

7 MR. WINFREY: Good afternoon. My name
8 is Matt Winfrey. I'm here testifying this
9 afternoon as a private citizen and as an
10 interested individual.

11 I've worked in the construction industry
12 for the past 20 years, and over those 20 years
13 I've seen many changes; primarily through use of
14 recycled materials being used to build our streets
15 and our homes. I know that the use of coal
16 combustion by- products has a long and successful
17 record in the construction materials business.
18 Recycling coal ash into construction materials
19 appears to be the obvious choice for managing
20 materials that otherwise will end up taking up
21 more landfill space.

22 I truly feel that if coal ash is

1 regulated as hazardous waste, any efforts to use
2 the materials for residential and commercial
3 buildings will be harmed, and this most certainly
4 will cause an increase in the cost of construction
5 materials that will require manufactured raw
6 materials. If this happens, I feel it will have
7 an even greater negative effect on construction
8 material costs for all residential housing and on
9 the construction industry. An increased cost will
10 likely cause even more loss of construction jobs.

11 Based on all my experience in the
12 construction business and my knowledge of the
13 value that coal ash adds to the finished products
14 used in construction, I ask that the EPA consider
15 all the positive and environmental impacts that
16 recycling coal ash has of the current economy.
17 Find a way to regulate coal ash disposal under the
18 nonhazardous rules approach and avoid causing harm
19 to the successful recycling business.

20 Making this decision not to classify
21 coal ash as hazardous waste or special waste under
22 Subtitle C is the responsible thing to do for our

1 future.

2 Thank you.

3 MR. BEHAN: Thank you for your comments.

4 Is there anyone in the room that has a number 300
5 or greater that has not spoken today? Is there
6 anyone in the room that would like to speak that
7 has a number that has not spoken yet today?

8 (No audible response.)

9 MR. BEHAN: What number do you have?
10 Could you spell it out?

11 SPEAKER: 183.

12 MR. BEHAN: Anyone else?

13 MS. CHENTFANT: 165.

14 SPEAKER: 166.

15 MR. BEHAN: Anyone else? Okay. Could
16 165, 166, and 183 come forward, please. Could 165
17 come to the podium, please.

18 MS. CHENTFANT: Sorry. The EPA
19 regulated coal combustion waste as special waste
20 under RCRA Subtitle C, including coal waste
21 produced, proposed for questionable beneficial
22 reuse.

1 Concerned residents of Portland, New
2 York and People Like Us, Crop Plus, is a
3 volunteer, grassroots group established to protect
4 our environment and waterways. We are working to
5 end the use of coal combustion and bottom ash as a
6 deicer and traction agent on our roads. The ash
7 is not encapsulated. Our ditches are not lined.
8 We believe this use is merely unmonitored dumping
9 rather than reuse.

10 No required periodic ash analyses were
11 found in our FOIL requested State records.
12 Therefore, Crop Plus commissioned the professional
13 sampling and testing of bottom ash, five surface
14 waters, ditch sludge and three domestic wells.
15 These samples were collected in the towns of
16 Portland and Pomfret, New York.

17 A creek which runs adjacent to
18 Portland's stockpiled ash was the most severely
19 contaminated. Chuck Norris of Geo-Hydro in
20 Colorado reviewed the results and said, "This is a
21 substantial piece of evidence that the Portland
22 stockpile of coal bottom ash is contributing to

1 water degradation scientifically and from the
2 position of taking water that is safe to drink, to
3 water that is unsafe."

4 A residential well on a road that has
5 received ash for decades was found to have very
6 high levels of iron and manganese. The combined
7 total for iron and manganese was 13.2 parts per
8 million. The recommended New York state secondary
9 drinking water standard is 0.5 parts per million.

10 Agencies must re-evaluate manganese.
11 When manganese was declared a secondary standard,
12 little was known about its health effects. Today,
13 manganese is known to affect the nervous system
14 and is associated with muscle and mental problems.

15 Furthermore, there is a pond at this
16 residence. When the homeowner tries to stock the
17 pond, fish do not live for more than 24 hours.
18 Wildlife has been hunted on the property. Often
19 the landowner finds diseased animals with tumors.
20 The residents deserve to have their questions
21 heard and answered.

22 A sludge sample was collected from a

1 roadside ditch. The water and the sludge from
2 this ditch travels through two lakeside
3 residential areas and into Lake Erie. This
4 roadside ditch is at the entrance to two coal ash
5 landfills. The cement entrance is washed with
6 water that drains directly into the ditch. All
7 test data will be submitted with written and
8 electronic testimony.

9 New York State DEC has recently closed
10 hearings on a draft solid waste plan titled,
11 "Beyond Waste." The proposed plan called for less
12 testing requirements.

13 Thank you.

14 MR. BEHAN: Ma'am, would you state your
15 name for the record, please?

16 MS. CHENTFANT: I'm sorry. It's Libby
17 Chentfant.

18 MR. BEHAN: Thank you. 166.

19 MR. HOFTER: My name is James Hoftter.
20 I'm a cofounder of Crop Plus. I'd like to speak
21 about New York State DEC policy and practices.

22 BUD 122-0-34 granted in 1992, allows coal bottom

1 ash from two power plants to be used as a traction
2 agent with the following conditions: A sample of
3 the ash may be obtained and analyzed twice
4 annually for TCLP metal. If the results indicate
5 a metal will have an adverse impact on water
6 quality, the DEC will immediately notify and new
7 samples must be analyzed. Accumulated ash cannot
8 be used and must be managed properly. A
9 semi-annual report must be submitted to the DEC to
10 keep track of the amount of ash reused throughout
11 the state. This report must list the users of the
12 ash and quantities each user receives.

13 Moreover, the BUD was updated in 1996 to
14 allow the use of bottom ash as the surface
15 material for running tracks. Regulation 360-1.15
16 was adopted in '93. Part A states: BUD's granted
17 by the Department before the effective date shall
18 remain in effect subject to conditions contained
19 therein. Part A is not being enforced. DEC
20 reports this BUD has been incorporated in
21 regulation 360. If not into part A, then surely
22 it must be incorporated into part D, which states:

1 The generator or proposed user of solid waste may
2 petition the DEC, in writing, to beneficially use
3 the waste. They must provide a demonstration that
4 management of solid waste will not adversely
5 affect human health, safety, the environment, and
6 natural resources by providing a solid waste
7 control plan. This was described as follows:
8 Procedures for periodic testing of the solid
9 waste, a description of storage and maximum
10 anticipated waste inventory not to exceed 90 days
11 before using. Procedures for run-on and run-off
12 control of the storage areas. None of these being
13 required of BUD 122-0-34. Crop Plus presented
14 proof of pollution.

15 EPA must classify CCRs under Subtitle C.
16 Thank you.

17 MR. BEHAN: Thank you. 123.

18 MR. CHANCE: Hello, and thank you for
19 the opportunity to speak today. My name is Eric
20 Chance, and I'm the water quality associate for
21 Appalachian Voices and the Watauga Riverkeeper, a
22 North Carolina- based environmental nonprofit.

1 Our work includes studying the effects of coal
2 combustion waste on the environment.

3 Based on a review of the voluntary
4 groundwater monitoring data, every coal ash pond
5 in North Carolina for which data was available is
6 leaching heavy metals and other pollutants into
7 groundwater. This leaching is causing heavy
8 metals to be taken outside of the waste boundary.
9 Equally as alarming is the prevalence of
10 groundwater contamination at these sites is the
11 level of contamination. Monitoring showed 681
12 exceedances of State groundwater standards
13 including arsenic levels up to 8.8 times the State
14 standard, boron levels up to 16.6 times the State
15 standard, chromium levels up to twice the State
16 standard, iron levels up to 380 times the State
17 standard, lead levels up to three times the State
18 standard, and manganese up to 200 times the State
19 standard. This contamination not only has the
20 potential to damage nearby waterways, but it can
21 also contaminate the drinking water of nearby
22 residents. And only one of the 13 ash ponds

1 reviewed by this study has NC Department of
2 Environmental and National Resources required any
3 sort of cleanup or monitoring or further
4 monitoring action.

5 Appalachian Voices has also partnered
6 and researched in the wake of the Kingston,
7 Tennessee coal ash spill. Research has been
8 ongoing since the spill and has shown levels of
9 arsenic, barium, cadmium, lead and selenium in the
10 Emory River exceeding protective drinking water
11 standards and/or aquatic life criteria. Although
12 water quality has returned to a more normal state
13 since the spill, ash and ash-laden sediments with
14 high levels of arsenic have washed far downstream
15 from the spill site. Also, selenium levels in
16 fish downstream from the site continue to rise and
17 at exceeded threshold levels for reproduction and
18 growth.

19 Our research clearly shows that coal
20 combustion waste has significant impacts on
21 groundwater, surface water and aquatic organisms.
22 Current regulatory framework does not adequately

1 address the toxicity of coal ash and has allowed
2 the contamination of our nation's water to go on
3 for too long.

4 Our research shows that coal ash is
5 hazardous to the environment and we believe it
6 should be regulated as a hazardous waste under
7 Subtitle C.

8 Thank you.

9 MR. BEHAN: Thank you for your comments.
10 Are there any individuals in the room that have a
11 number that have not spoken today that would like
12 to speak?

13 (No audible response.)

14 MR. BEHAN: Seeing no speakers, let's
15 take a ten-minute break. We were scheduled to
16 take a break from 6:00 to 6:15 tonight. Let's go
17 ahead and take a ten-minute break before we take
18 that 15-minute break. Thank you.

19 (Whereupon, at 6:00 p.m., an
20 afternoon recess was taken.)
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1 with me at EPA headquarters, Frank Ney of the
2 EPA's Region 4 and Alexander Livnat, who also
3 works with me at EPA headquarters.

4 Okay, what I'm going to do now is cover
5 the logistics for the comments portion of today's
6 public hearing and the way it's going to work is
7 speakers, if you've registered you were given a
8 15-minute time slot when you were scheduled to
9 give your three minutes of testimony. To
10 guarantee that slot we've asked that you sign in
11 10 minutes before your 15-minute slot at the
12 registration desk. Speakers that have
13 preregistered and walk-ins were given a number
14 when you signed in today and this is the order in
15 which you'll speak. I'll call speakers to the
16 front of the room by number, four or five at a
17 time. When your number is called please move to
18 the microphone and state your name and your
19 affiliation. We may ask you to spell your name
20 for the court reporters who are transcribing your
21 comments into the official record.

22 Because there are many people who have

1 signed up to provide testimony today and to be
2 fair to everyone, testimony is limited to three
3 minutes. We'll be using an electronic timekeeping
4 system and will also hold up cards to let you know
5 when your time is getting low. When we hold up
6 the first card this means you have two minutes
7 left. When they hold up the second card that
8 means you have one minute left. When we hold up
9 the third card, when the third card is held up you
10 have 30 seconds left, and when the red card is up
11 you are out of time and should not continue with
12 your remarks other than to do a closing remark.

13 Remember you can provide any written
14 material to our court reporter and the material
15 will be entered into the rulemaking record. We
16 will not be answering questions on a proposal.
17 However, from time to time any of us on the
18 hearing panel may ask questions to you to clarify
19 your testimony.

20 Our goal is to ensure that everyone
21 who's come today to present testimony is given an
22 opportunity to provide comment to the extent

1 allowable by time constraints. We'll do our best
2 to accommodate speakers who have not
3 preregistered. Today's hearing was scheduled to
4 close at 9:00 although we will continue to hold
5 the hearing as long as there are speakers, up
6 through probably midnight if -- because that's
7 when -- that's how long we any paid for the room.

8 And if time doesn't allow for you to
9 present your comment orally, we've prepared a
10 table in the lobby where you can provide a written
11 statement in lieu of oral testimony and these
12 written statements will be collected and entered
13 into the docket for the proposed ruling, and
14 they'll be considered the same as if you presented
15 them orally here.

16 If you would like to testify but have
17 not yet registered to do so, please sign up at the
18 registration table. We are likely to take
19 occasional breaks, especially if we don't have any
20 speakers. We might take a 10-minute break and
21 hope that speakers come in and then we'll continue
22 on. That's typically what's been done at previous

1 hearings.

2 And finally, if you have a cell phone
3 we'd appreciate it if you would turn it off or put
4 it on vibrate. And if you need to use your phone
5 at any time during the hearing, please move to the
6 lobby.

7 We ask for your patience as we proceed
8 this evening, and we may need to make minor
9 adjustments as the day progresses and thanks again
10 for participating today. And let's get started
11 with evening session.

12 I'm going to call numbers 124, 125, and
13 127 to come forward. Speaker 124?

14 MS. MOORE: First, a strong thank you to
15 you officials who are here today. You give me
16 hope that the facts can be heard surrounding the
17 issue of coal burning and the disposal of toxic
18 waste. Thank you for coming here. I understand
19 this is the largest ever opportunity, eight sites,
20 for the EPA to listen to the citizens of this
21 country. Thank you for giving us the opportunity
22 to speak about our concerns. We're placing our

1 confidence in you that you will do the right
2 thing, for this is a moral decision that we face
3 today, one of the most important that you or we
4 will face to determine our future.

5 My father moved to Charlotte 100 years
6 ago. That's not really that long, really. There
7 were no paved streets, no cars. Electricity was a
8 novelty. Primitive conditions some would say but
9 the water was safe. If my father came today he
10 would be shocked that people are drinking water
11 from plastic bottles and that babies are born with
12 toxic metals in their system.

13 I've lived in Charlotte all my 72 years.
14 What kind of community will I bequeath to my
15 children and grandchildren who live here, as my
16 father did to me? I was arrested last May for the
17 first time for protesting the plant at Cliffside.
18 For me personally this was a small thing. I want
19 to do more. I want my government to do more. I
20 want my community to do more. And I want to tell
21 my grandchildren that the civilization that was
22 bequeathed to them is one in which they can live

1 healthy lives. In this recent economic crisis,
2 many people have criticized the role of
3 government, feeling that government is the
4 problem. The Environmental Protection Agency has
5 this opportunity to step up and protect the
6 citizens of this community from a corporation that
7 is clearly more concerned with the bottom line
8 than the health of its citizens.

9 I'm here today to ask the EPA to
10 regulate coal ash waste as a hazardous waste that
11 it is and would like to close quickly with a poem
12 by Kay Ryan, former US poet laureate. She had
13 read an article about Easter Island where people
14 cut down logs to build their statues, and here's
15 the really quick little poem:

16 It worked without a hitch. The last big
17 head rolled down the last logs to its niche as
18 planned. A long chorus of monoliths had replaced
19 the forest; staring seaward, nicely spaced, each
20 with a generous collar of greensward and prepared
21 to last for so long that it would be a good trade;
22 life for the thing made.

1 Thank you.

2 MR. DELLINGER: Thank you. You're
3 number 127, is that right? Okay, you can come
4 forward. You can go now.

5 MS. HENRY: My name is Beth Henry.
6 Three years ago while opposing construction of
7 Duke Energy's new coal plant, I spoke with many
8 regulators about coal ash waste from Cliffside and
9 Duke's plans for disposing of huge amounts of even
10 more toxic waste from the new plant. It was clear
11 then that our state regulators were not paying
12 much attention to this issue. Duke was
13 essentially regulating itself; doing its own
14 testing and even writing the laws.

15 Our legislature had just passed a Solid
16 Waste Management Act that included a last-minute
17 amendment with no opportunity for public debate,
18 called Combustion Products Landfills. That
19 amendment, written by utility lawyers and
20 consultants, allows the utilities to pile tons of
21 dry coal ash waste on top of old, unlined slurry
22 ponds; like putting a bowling ball on top of a

1 sponge.

2 I asked regulators in the Division of
3 Waste Management and the Aquifer Protection
4 Division about the new law, GS 130A-295.4, and was
5 disturbed by their comments. When I objected that
6 the utilities had written the law, I was told,
7 quote, "We were happy. We would not have been so
8 bold as to have asked for this." One regulator
9 said monitoring wells weren't required because
10 they would be useless since, quote, "All these
11 sites already have contamination and other issues,
12 and it would be impossible to tell where the
13 contamination would be coming from."

14 When I asked if piling huge new dry coal
15 ash landfills on leaking unlined slurry ponds
16 would squish more poisons out sideways. I was
17 told, quote, "You're wasting your energy. This
18 doesn't even register on the radar screen compared
19 to the damage they've done. You like turning on
20 your lights, don't you?"

21 Another regulator said they know there
22 is groundwater contamination around the old ponds,

1 but quote, "what does it matter if people aren't
2 drinking it and there's no resource value to the
3 aquifer?"

4 When I asked if piling new waste on
5 leaking slurry ponds might be an attempt to avoid
6 ever having to clean up existing damage, they
7 said, quote, "You have to have electricity. There
8 are a lot of problems from stuff that happened 40
9 years ago folks thought was okay then. It's
10 probably impossible to clean up. At least it
11 would cost too much."

12 The regulators had very low expectations
13 and seemed grateful for whatever the utilities
14 volunteered to do. Legislators have told me that
15 no bill ever passes our General Assembly that Duke
16 Energy doesn't want to pass. Because our
17 legislators and regulators are overwhelmingly
18 influenced by the utilities and other businesses
19 whose want to profit from our natural resources,
20 not to protect them, only strong Federal
21 regulation will be adequate.

22 MR. DELLINGER: Thank you.

1 MR. BLUMENTHAL: Good evening. My name
2 is Phil Blumenthal and I am the director of the
3 Blumenthal Foundation and a co-owner of Radiator
4 Specialty Company, both headquartered in
5 Charlotte, and I thank you for the opportunity of
6 speaking before you today.

7 Our company is a leader in the
8 manufacturing of cleaning and degreasing,
9 lubricating and penetrating, and maintenance and
10 repair solutions primarily for the automobile
11 aftermarket. In the business we are in, some of
12 our products do use toxic materials and we are
13 required to follow government regulations to
14 assure that these items are neither a threat to
15 the health of their users or the health of the
16 environment in general. That's why I feel that if
17 a company either manufactures a hazardous product
18 or as a result of the production process,
19 hazardous waste is created, these products or
20 by-products must be regulated.

21 Coal ash contains, among other
22 substances, arsenic, cadmium, selenium, and

1 mercury, which certainly are hazardous materials.
2 Released into the air and water, the potential for
3 harm is too great to ignore. State regulations
4 are simply too inconsistent to provide adequate
5 protection if the ingredients in coal ash cross
6 states lines. Only federal regulations will
7 assure the protection of both human health and our
8 environment.

9 As a business owner I'm sensitive to the
10 business community and the effect on companies
11 that use coal plant by-products. Those companies
12 that are using waste materials that are not
13 hazardous should be excluded from any new
14 regulations. But the use of toxic coal ash itself
15 should surely be controlled. The added cost due
16 to regulation would very likely pale in comparison
17 to the costs, both health and environmental, our
18 society will face if we have to clean up the
19 components of coal ash once they are released into
20 the environment.

21 Without the establishment of a federal
22 regulation, we will continue to see a worsening

1 effect on our air and water quality. I urge you
2 to adopt Subtitle C of the Resource Conservation
3 and Recovery Act in the interest of public health
4 and environmental quality. Thank you.

5 MR. DELLINGER: Thank you. Numbers 328,
6 329, and 330? Not here. Number 331? Number 332,
7 333?

8 MR. WALKER: My name is Hollis Walker.
9 I'm a kayaker, mountain biker and a hiker. I love
10 clean air and clean water. I have three small
11 children and I want them to have a healthy future.

12 I also recognize the law of diminishing
13 returns. Subtitle C will provide immeasurably
14 smaller environmental protection over Subtitle D;
15 lower result and massive cost increases to the
16 cost of coal generation. That fact is what may
17 really be driving the Subtitle C advocates. I've
18 heard a speaker today say EPA has designated coal
19 ash as toxic. That is not true. There is an
20 established scientific procedure that establishes
21 whether solid waste exhibits solid waste
22 characteristics. Ash does not. The speaker was

1 misinformed, obviously.

2 I've heard speakers say there's no
3 regulation of coal ash in several states. I know
4 for a fact that is not the case in at least one of
5 the states mentioned, Georgia. I suspect the
6 statement is incorrect in regard to several other
7 states.

8 I've seen herds of young people,
9 obviously coached; proclaiming Subtitle C is the
10 only responsible choice when their own testimony
11 reveals they have little to no understanding of
12 the facts; particularly in regard to health
13 effects. I've heard it said that the industry is
14 more concerned about profits than environmental
15 responsibility, that the true cost of coal needs
16 to be on the industry. This shows a lack of
17 understanding how the world functions. Most
18 utilities are regulated and their profits are
19 virtually fixed. They can't price gouge, but they
20 are guaranteed a return on investments to ensure
21 they stay in business and can keep the ratepayers'
22 lights on.

1 The cost increases, which are
2 phenomenally underestimated by EPA, will go
3 directly to every American's power bill. In fact,
4 utilities could make more profit as they would
5 make a return on the cost increases imposed by a
6 Subtitle C designation. Utilities oppose Subtitle
7 C because it is the right thing to do. In fact,
8 they are ratepayers also.

9 EPA must weigh the comments given today
10 based on the credibility and factual substance of
11 the commenter, and not the quantity of
12 ill-informed commenters. EPA should not be fooled
13 into thinking that the number of Subtitle C
14 supporters is anywhere close to a representation
15 of mainstream America. Those folks are busy
16 working as productive members of the American
17 economy right now. Thanks.

18 MR. DELLINGER: Thank you.

19 DR. HENDERSON: Hello, I am Dr. David
20 Henderson and I teach environmental ethics at
21 Western Carolina University. Thank you for
22 holding this public hearing. I think it's clear

1 that the public are in favor of the regulation of
2 toxic and hazardous substances, and the toxicity
3 of coal ash is not a matter of public opinion, but
4 a matter of empirical investigation.

5 But I'm here to speak here primarily
6 about not my financial interests as a buyer of
7 electricity but my moral interests in not
8 contributing to the poisoning of my brothers and
9 sisters and fellow Americans. I take this
10 interest very seriously. I don't want my dollars
11 going to the destruction of God's creation or my
12 neighbors. And as I see it, it is doing that
13 significantly. In other areas I have options. If
14 a clothing manufacturer is using child labor I can
15 buy from someone else. If an agricultural company
16 is using toxic or cruel methods I can eat
17 something else. But because of the nature of
18 utilities I can't buy electricity from someone
19 else. So an interest that I have that needs to be
20 protected because of the structure of utilities is
21 my moral interest of not contributing to the
22 poisoning of my neighbors or the earth.

1 As such, I request that you see to this
2 and it appears to me that Option C most clearly
3 accomplishes this goal.

4 Thank you.

5 MR. DELLINGER: Thank you. Numbers 130,
6 140, and 159?

7 MR. KEENER: Good evening, ladies and
8 gentlemen. I appreciate the opportunity to
9 comment on the proposed regulations regarding coal
10 ash.

11 My name is Stephen Keener, I'm a
12 physician trained in family medicine and public
13 health, and have practiced in the public sector
14 for over 25 years. My career has been dedicated
15 to protecting the health of the people from
16 pathogenic organisms and toxins in the
17 environment, and promoting healthy behaviors that
18 prevent the development of acute and chronic
19 diseases.

20 I speak in favor tonight of Subtitle C.
21 There can be no argument that coal ash is a
22 substance which is hazardous to human health. It

1 is not necessary for me to repeat what others have
2 said here today about the scientific evidence
3 linking the coal ash with human disease and death.
4 There is also no question that the toxic chemicals
5 in coal ash leach into the water table, and
6 contaminate our drinking water. If stored in an
7 uncovered landfill, the same harmful substances
8 can be blown into the air we all breathe.

9 Regardless of whether coal ash
10 contaminates drinking water or the air, it exposes
11 human beings to toxins and their health will be
12 harmed. This does not have to happen. If coal
13 ash is declared a hazardous substance, then people
14 can be protected from an environmental hazard that
15 can be mitigated. Regulation of coal ash is an
16 absolute no-brainer.

17 Now you are sitting in Mecklenburg
18 County, North Carolina, but you are only seven
19 miles from York County, South Carolina. I say
20 this to illustrate the point that regulating coal
21 ash in one state doesn't protect people in
22 adjoining states from leachate, run-off, or

1 airborne particulate matter. The point is that
2 letting each individual state create its own rules
3 regarding coal ash will ultimately not result in
4 the protection of health for all.

5 EPA needs to declare coal ash a
6 hazardous substance, and regulate its treatment
7 and disposal from coast to coast, so all citizens
8 of our country can enjoy the benefits of air and
9 water not contaminated with coal ash toxins.

10 In conclusion, whether it is pumped into
11 slurry ponds where it leaches into the groundwater
12 and watersheds contaminating the water we drink,
13 or dumped in landfills where it can be blown into
14 the air we breathe, coal ash contains toxins that
15 harm people. Of course it is important to
16 generate the electricity we need, and to maintain
17 jobs built on this industry. But this need must
18 be balanced by protection of our most precious
19 resource, the people who live in our communities.
20 The most sensible way to ensure the most healthy
21 people with respect to coal ash is for the EPA to
22 declare it a toxic substance, and regulate it

1 throughout the United States of America.

2 Thank you.

3 MR. DELLINGER: Thank you. Numbers 40,
4 140 and 159 come in. I was told that they were
5 here right now ready to testify.

6 MR. GARDNER: Good Evening. My name is
7 Robert Gardner and I am Greenpeace USA's Coalition
8 and Partnership representative. I am here today
9 to support your efforts to create a federal
10 minimum coal ash disposal standard.

11 It's clear that coal ash must be treated
12 as hazardous under Subtitle C of RCRA. I am here
13 representing our millions of members worldwide
14 saying that coal ash is indeed hazardous and that
15 state-by-state enforcement is just not enough. We
16 need Federal guarantees to ensure that dangerous
17 coal ash isn't just shipped to the state with the
18 most lax regulatory scheme.

19 Sound science supports the special waste
20 designation. Coal ash waste contains arsenic,
21 lead and mercury, among other toxic metals. These
22 dangerous, toxic elements cause cancer, organ

1 disease, respiratory illness, neurological damage,
2 and reproductive and developmental problems.
3 There are over 130 damage cases that have been
4 clearly documented. This is an ongoing national
5 health catastrophe and requires redress
6 immediately.

7 Business as usual will not protect the
8 health and welfare of the American people.
9 Responding to pressure from the utility industry,
10 prior administrations have allowed the industry to
11 police itself or self-regulate under a patchwork
12 of state directives, leading to the extensive
13 contamination of water and land by toxic heavy
14 metals. This approach has not and will not
15 protect streams, ponds, rivers, lakes and other
16 waters.

17 Here in North Carolina, voluntary
18 groundwater monitoring at Duke's Dan River Steam
19 Station's coal ash ponds have detected levels of
20 chromium, iron, lead, manganese, silver, and
21 sulfate that exceed state groundwater standards
22 and Federal maximum contaminant levels and

1 secondary maximum contaminant levels. Dan River
2 Steam Station has two unlined coal ash ponds as
3 well as an unlined dry ash landfill. Fifteen
4 years of sporadic voluntary monitoring beginning
5 in November '93 indicated that there is on-site
6 groundwater contamination that is likely migrating
7 outside of state-designated compliance boundary
8 for Dan River's CCW impoundments.

9 EPA ranked both wet CCW ponds at Dan
10 River Steam Station as "high hazard" surface
11 impoundments, meaning that their failure will
12 probably cause loss of life. Energy should not
13 cost lives, period.

14 Lax guidelines such as those that would
15 be applied under Subtitle D regulations will fail
16 to fix the problem as the EPA expects that
17 approximately 50 percent of coal ash dumps and
18 waste will not clean up under this plan. This is
19 unacceptable. A hazardous waste designation under
20 Subtitle C of RARA would ensure that coal ash
21 dumps and waste ponds have all the protections
22 currently required at waste landfills. Solid

1 waste permits, liners, monitoring systems, and
2 leachate collection systems make sense, are
3 readily available technologies, and can help
4 prevent disproportionately poor communities from
5 being at risk from high-hazard dams and leaking
6 dumps.

7 Thank you very much and I am available
8 for questions.

9 MR. DELLINGER: Thank you. 167, 199 and
10 202.

11 MS. MATTOX: I'm Judy Mattox. I'm
12 vice-chair of the local Sierra Club in Asheville,
13 North Carolina and I'm here to strongly recommend
14 the EPA adopt schedule C, and declare coal ash
15 hazardous, and provide Federal regulations,
16 nation-wide.

17 In the past few weeks I have had the
18 privilege of doing canvassing in the neighborhood
19 and I have gone from door to door in the
20 neighbors' area who live as close sometimes as 100
21 yards to the coal ash ponds and as far away as a
22 quarter of a mile from the coal ash ponds in

1 Arden, which is right south of Asheville, North
2 Carolina.

3 Neighbor after neighbor told us that
4 coal ash was blowing and covering their houses,
5 their garages, their cars. We had one neighbor,
6 Tom Nye invite us into his garage. He said he had
7 just swept it out and he raised his window sash
8 and there was this pile of coal ash. And of
9 course we said "Oh goodie," and scooped some of it
10 up and sent it off to be analyzed.

11 The next day, I mean all of the
12 neighbors said they had this continuous problem
13 with the fly ash. Sadly, one of the neighbors
14 told us that her mom had just had a very large
15 lung cancer tumor removed and that she could point
16 to that house and that house, and that house,
17 where these neighbors either currently were living
18 with cancer or had died from cancer, and it was
19 very, very sobering to walk down the street.

20 So indeed, we're talking fly ash and air
21 quality are very grave concerns. But also water
22 quality in the concentration, as you've heard

1 speaker after speaker say arsenic, mercury,
2 cadmium, selenium, those certainly are grave
3 concerns.

4 The coal ash ponds of Progress Energy
5 are permitted by the state of North Carolina to
6 discharge into Asheville's French Broad River.
7 Only mercury has any kind of limitation and that's
8 given a monthly average limitation. Our French
9 Broad Riverkeeper, Hartwell Carson, stated that
10 the river near the admission point, where these
11 ponds admit out into our river, have the elevated
12 levels of arsenic and that fish tissue samples
13 tested with elevated selenium.

14 The groundwater ponds have also tested
15 with elevated readings of heavy metals. And of
16 course we're concerned with the possibility of the
17 dams breaking and flooding our interstate, which
18 is right there, and the river which is right
19 there.

20 So I strongly recommend that EPA have
21 coal ash be stored in dry ponds which are lined
22 with covers and I recommend that "hazardous" and

1 "regulation" be the themes of the day.

2 Thank you very much.

3 MR. DELLINGER: Okay, number 199.

4 MR. JEFFRIES: Thank you for holding
5 these hearings. My name is Donald Jeffries. I
6 live in Arden, North Carolina, less than a mile as
7 the wind blows from the two coal ash ponds
8 maintained by Progress Energy. Fortunately, we're
9 on the upslope side and not in immediate danger
10 should there be a break in the levy, unless of
11 course I happen to be scooting along on I-26 at
12 the time. I'd be washed right into the French
13 Broad River which runs very nearby. We have
14 friends and neighbors who are more immediately
15 affected by the coal ash. They are subjected daily
16 with windblown ash. It accumulates on their
17 houses and their windowsills and invades, if the
18 windows are open. They worry about inviting their
19 grandchildren over to play the yard, as do we.
20 The wind carries that material everywhere. And
21 that material is toxic. Toxic, and is not
22 terribly good for us. But you say it is just

1 dirt. Just like dirt. Don't be a worry-wart,
2 it's just like dirt. Right.

3 Several heavy metals like cadmium,
4 (inaudible) and mercury are highly toxic in
5 relatively low concentrations. These tonics used
6 to be regulated, need to be regulated. Right now
7 there's very little regulation, and halfheartedly
8 it seems, by the states. States simply don't have
9 the money or perhaps the will to do this sort of
10 regulation.

11 This needs to be well-coordinated over
12 the entire nation of the federal government or the
13 Environmental Protection Agency. It's your job to
14 protect our environment.

15 The industry seems to be worried too
16 much about their profits. They talk a good game
17 about how they care and how they are keeping
18 things shipshape. But they fail far too often.
19 Like the breached coal ash pond in Tennessee, like
20 many oil spills around the planet, topped off by
21 the BP extravaganza and loss of life in the Gulf.

22 I am a firm believer that climate change

1 is real. We will stand at our peril if we fail to
2 change our ways. What we need is a new energy
3 policy, working now to get us off our addiction to
4 oil and coal. In the meantime we need to get
5 control of tons of coal ash. It needs to be in
6 lined landfills and covered up so it doesn't leach
7 into our groundwater or blow into our
8 neighborhoods. In other words, I prefer
9 regulating coal ash as hazardous waste on the
10 Federal level now, before we have another
11 dangerous spill of this toxic ash.

12 Thank you.

13 MR. DELLINGER: Thank you. Number 202.

14 MS. GREENBERG: Hello. I'm Lori
15 Greenberg and I'm here this evening as a new
16 resident of Buncombe County and Arden, who lives
17 within two miles of Progress Energy. I'm also a
18 concerned citizen and an avid kayaker.

19 A week after moving to the beautiful
20 state of North Carolina, I learned about the
21 complications from coal ash that effect this
22 region. The pollutants often mentioned in coal

1 ash are the ones that other people have mentioned
2 this evening: Mercury, cadmium, selenium and
3 arsenic. These toxins are dispersed both through
4 the groundwater of the ponds, which are not lined,
5 and through the actual ash itself. This ash
6 leaves a film in the homes and in the yards of
7 families who reside close to the plant.

8 Mercury is known to cause neurological
9 impairment to fetuses, infants and children.
10 Cadmium, when inhaled over long periods, can cause
11 serious lung damage and if ingested over long
12 durations can lead to kidney disease. Selenium in
13 high doses causes vomiting and diarrhea, and
14 there's also a disease linked to selenium called
15 selenosis, which has symptoms that include hair
16 loss, brittle nails, neurological damage and other
17 nerve loss changes. Arsenic can have carcinogenic
18 effects on the skin, organ and lungs. Heart
19 disease, neurological damage and hormonal changes
20 have also been connected to high levels of
21 arsenic.

22 These are only the symptoms of each one

1 of these chemicals when inhaled or ingested
2 singly, not in combination, as when exposed to
3 coal ash. And all of these toxins have other
4 short and long-term effects. Pregnant women,
5 infants and children who live in our community are
6 continually being exposed to these chemicals
7 through the dust particles that embed themselves
8 into their homes. We know that long exposure to
9 such chemicals places all at extremely high risks,
10 but especially our more vulnerable individuals.

11 Furthermore there has been community
12 concern around the high numbers of persons with
13 leukemia and other cancers who live in the
14 neighborhood around the plant.

15 It is time we put safeguards in place to
16 help decrease further high-level exposure. We
17 need to contain the toxins admitted from this
18 plant to ensure that our children can play safely
19 outdoors, that our wildlife can live in the
20 waterways and breathe clean air. I want to kayak
21 in the beautiful rivers of western North Carolina
22 free from the worry of hazardous waste. We need

1 to prevent a disaster like the one at the
2 Tennessee Valley Authority plant.

3 As a citizen, I mistrust large energy
4 companies, fearing they care more about profit
5 than about health, safety, and I'm asking the EPA
6 to enforce and regulate Subtitle C option,
7 determining coal ash hazardous.

8 MR. DELLINGER: Thank you. Is there
9 anyone in the room with a number of 140 or lower
10 who hasn't spoken? Can you come forward, please?

11 MS. CUMMINGS: My name is Catherine
12 Cummings, and I appreciate this opportunity to
13 address this panel. I want to urge you to
14 regulate coal ash waste as a hazardous material.

15 I grew up in Charlotte and I've come
16 back home today for this comment period. My
17 husband and I live in rural Washington County in
18 Georgia, about an hour west of Augusta. We live
19 about eight miles from a proposed coal-fired power
20 plant site and we are concerned about the impact
21 that will have on the well water that we rely on
22 everyday as the only source of water that we have

1 for our house. We're worried about the impact on
2 our friends and our neighbors.

3 The Georgia Environmental Protection
4 Division recently responded to questions about
5 plant Washington that were raised in October at a
6 public comment session. The plant will generate
7 500 to 570 acre-feet of coal combustion waste
8 every year, enough to cover a football field with
9 ash that will be as tall as a 40- story building.

10 The EPD said that this plant -- the coal
11 ash waste would be stored on a liner that will
12 accumulate in 30 years' time eight tons of mercury
13 and 100 tons of arsenic, in addition to other
14 heavy metals and contaminants. They said that
15 they would check that waste storage site to see if
16 it's leaking into our groundwater at our local
17 streams and rivers.

18 The nearby river, the Ogeechee River, is
19 already so full of mercury that pregnant women are
20 advised to eat no fish from that river. My
21 grandchildren, who are both younger than five,
22 they can't eat any of the fish that they catch in

1 that river.

2 Combustible coal waste and its storage
3 are serious health issues for my family, for our
4 friends and the larger community. The health and
5 environmental impacts of coal ash waste will
6 affect Washington County and surrounding areas
7 negatively in both the immediate and the long-term
8 projections. It's completely unreasonable to
9 treat coal ash waste the same way as household
10 garbage. Coal ash is hazardous and should be
11 regulated that way.

12 Please select Subtitles C option and
13 regulate coal ash as a special hazardous waste.
14 Thank you.

15 MR. DELLINGER: Thank you. I'm going to
16 call on numbers 328, 339, and 330.

17 MR. PENNY: I want to start by saying
18 thank you for having these hearings. My name is
19 Marcus Penny and I am a recent graduate of
20 Morehouse College in Atlanta, Georgia. My
21 experience at Morehouse College has resulted in a
22 degree -- a large amount of debt, but most

1 importantly in an inconvenient passion for the
2 fight against ignorance and injustice. After
3 traveling for about four hours to this hearing
4 here in North Carolina to make a three-minute
5 statement, and I'm facing another four-hour drive
6 home, I understand the meaning of the statement
7 "ignorance is bliss." Not only is it bliss for
8 people like me who live in apartments miles away
9 from coal ash ponds but it's also bliss for those
10 who have to deal with making sure that their
11 organizations properly dispose of the ash that
12 they produce.

13 Ignorance however is a silent killer of
14 individuals who live in communities that are
15 plagued with high cancer rates, illness and
16 environments in degradation. Thankfully, nobody
17 in this room has to face the burden of being
18 ignorant, for we all are aware of the negative
19 effects of coal ash. We all however are plagued
20 with the heavier and more complex burden and that
21 is the burden of justice. Unfortunately some put
22 down the burden and pick up another burden of

1 making a profit and assuring that all their assets
2 are protected at all costs.

3 This misguided vision can be corrected
4 however by the EPA's implementation of Subtitle C.
5 This will take the burden off of the communities
6 and put it back on the shoulders of those who
7 pollute these communities and the result will be
8 protection of our most notable assets, which are
9 the earth, our children and the future.

10 I understand that injustice does not
11 happen in a vacuum and the EPA needs our help in
12 enforcing justice and that's what I'm here to lend
13 my voice. I'm here to stop ignorance and
14 perpetuate justice. And EPA, I ask you to join me
15 in enforcing Subtitle C.

16 Thank you.

17 MR. DELLINGER: Thank you.

18 MS. WILLIAMS: Hello, everyone, and
19 thank you for your time. My name is Eriqah
20 Foreman Williams and I'm a recent graduate of
21 Spelman College in Atlanta, Georgia, and am
22 currently a resident of Georgia.

1 In the organization I served as internal
2 director of in the Atlanta University Center. We
3 make environmental issues visible and to
4 relate-able to our peers and through our own
5 thirst for knowledge, educate ourselves and each
6 other on these issues when they endanger our
7 families back home. No one has to coach us to
8 care.

9 However, I am here today on behalf of
10 not only my school community but also my home,
11 Newark, New Jersey. Both of these areas are
12 considered urban inner cities and occupied by
13 citizens who don't normally get an opportunity to
14 get their voices heard, especially on issues such
15 as the environment. Coal-fired power plants were
16 staples in my community growing up. And when I
17 came to college the area was no different. Power
18 plants are permanent residents in our communities
19 and so many citizens, including my elderly
20 grandmother who has just recently added
21 respiratory difficulties to her list of ailments,
22 are affected by their admissions and waste.

1 Action must be taken immediately to stop this
2 cycle.

3 Additionally, it will not be an
4 effective idea to leave it up to the respective
5 state governments to regulate the communities'
6 whole usage. In many states, this is far down on
7 the to-do list of our governments. In my teenage
8 years as a New Jersey resident, I never heard this
9 regulation brought up in our government or on the
10 news. In my four years as a college student and
11 resident of Atlanta, Georgia, the same thing: not
12 high on the state's radar.

13 If two states thousands of miles away
14 from each other aren't making strides, federal
15 regulation is the next step. All I ask from the
16 EPA is that coal policies be as strict as possible
17 to ensure the health of the people and communities
18 nationally.

19 Thank you.

20 MR. DELLINGER: Thank you. Is number
21 316, 323 or 331 in the room?

22 (No audible response.)

1 MS. HALL: Good evening. My name is
2 Jonitka Hall. I am a current senior biological
3 science major at Clark Atlanta University in
4 Atlanta, Georgia. But I'm originally from rural
5 North Carolina; Kenansville in Duplin County, to
6 be exact. And when I was growing up a lot of
7 things were kind of weird. Every time we had a
8 hurricane my grandmother would always boil the
9 water and I thought that was kind of really weird.
10 And then as I got older they started to explain to
11 me how the industrial farm and agricultural wastes
12 would leak into our water and we had well water
13 and that's why we boiled it.

14 But you can't do that with coal ash.
15 And I think that if you want to continue to
16 protect our public waterways, that we need to have
17 the strongest and strictest restrictions possible.
18 Right now communities and counties over the world
19 have issues with this and as many of us mentioned
20 before, it leads to learning disabilities, birth
21 defects, and other illnesses, especially within
22 communities of color.

1 A strong federal rule can ensure 100
2 percent compliance, offsetting the initial cost
3 and avoiding health and water cleanup costs,
4 prevent massive disasters like the Tennessee
5 spill, and increase safe coal ash recycling. This
6 is not only an economic issue, but it is also a
7 health, safety and wellness issue and a Subtitle C
8 is the right choice in my opinion.

9 Thank you for your time.

10 MR. DELLINGER: Number 144?

11 MR. STOWE: Good evening. My name is
12 Allan Stowe. I'm an Environmental Specialist
13 testifying today on behalf of Duke Energy.

14 The question for Duke Energy is not
15 whether to regulate, but how to regulate. Duke
16 Energy has evaluated the alternatives and
17 determined that the Subtitle D Prime option, with
18 appropriate adjustments, is the best path forward.
19 Unlike the Subtitle C approach, Subtitle D Prime
20 will enable EPA to establish an environmentally
21 protective program without crippling CCR
22 beneficial reuse, threatening jobs, and increasing

1 electricity costs.

2 Environmental groups allege dozens of
3 new damage cases, listing some Duke Energy
4 facilities. The actual number of proven damage
5 cases is quite small. The current total is 27
6 proven damage cases and 40 potential damage cases.
7 A close examination of the facts will reveal many
8 flaws in the recent allegations made regarding
9 damage cases. Many of the assertions in the
10 reports are based on extremely flimsy evidence,
11 with unfounded conclusions meant to scare the
12 public. EPA cannot rely on these assertions in
13 any final rulemaking without conducting its own
14 factual, independent review of the sites and
15 allowing for public notice and comment on its
16 findings.

17 For example, an Electric Power Research
18 Institute analysis of the EPA damage case report
19 in 2008 shows only a handful of these cases
20 actually involve MCL exceedances. For example, of
21 the 54 proven or potential damage cases cited by
22 EPA in the report involving groundwater

1 contamination, only three involved off-site
2 contamination exceeding MCLs.

3 The same is likely true with the alleged
4 new damage cases cited by environmental groups.
5 In fact, during their press conference, they
6 acknowledged that some of these cases do not
7 involve off-site contamination, but were merely
8 speculating that the damage may migrate off-site
9 at some point in the future.

10 Another significant flaw is that the
11 environmental groups have not consulted with the
12 very states whose programs they allege are
13 deficient. These states contest these allegations
14 and charge that the environmental groups have
15 improperly characterized the effectiveness of
16 their state controls.

17 Assuming the allegations have any
18 factual basis, USWAG and Duke Energy support a
19 Subtitle D program that will involve groundwater
20 monitoring controls specifically designed to
21 detect any contamination before it moves off-site.
22 Duke Energy supports federal regulations that will

1 actually address the potential threats that the
2 environmental groups allege may occur from these
3 sites.

4 If Duke Energy determines an impact to
5 groundwater has occurred at any of its facilities,
6 the appropriate regulatory agency is notified and
7 proper next steps taken to ensure public safety.

8 In North Carolina, Duke Energy
9 voluntarily initiated ash basin groundwater
10 monitoring more than six years ago and has taken
11 substantial measures to reduce or eliminate
12 potential environmental impacts.

13 Thank You.

14 MR. DELLINGER: Thank you. Is there
15 anybody in the room with the number below 144 that
16 hasn't spoken? 138? 141? 138 and 141, please
17 come forward.

18 MR. MERRYMAN: Good evening. My name is
19 David Merryman and I'm the Catawba Riverkeeper
20 with the Catawba Riverkeeper foundation, a place
21 right here in Charlotte and working throughout
22 North Carolina and South Carolina.

1 As an advocate for the Catawba River, I
2 cannot sit idly by while Duke Energy and SCANA
3 discharge their heavy metal-laden coal ash pond
4 wastewater into the public's drinking water and
5 contaminating local groundwater supplies.

6 EPA must protect our nation's water
7 resources from broken and nonexistent state
8 regulations. Here, I've got four NPDES permits
9 from four different coal ash pond sites. These
10 permits have absolutely no limits for the heavy
11 metals known to be constituents of coal ash.

12 Before high-hazard coal ash ponds
13 continue to discharge unlimited amounts of metals
14 in the municipal tricky water supplies, old
15 retired ponds at sites throughout our nation lie
16 as subsurface threats and sources of groundwater
17 contamination. These sites must be cleaned up to
18 remove a constant, dormant threat to public
19 health.

20 Now today we've heard a lot about the
21 word "stigma." Let's talk about this. A stigma
22 for a substance that causes cancer is warranted.

1 A stigma for a substance that's toxic and leads
2 directly to death, I'd say that's warranted.
3 We're talking about chromium and arsenic; both
4 heavy metals known to be constituents of coal ash.
5 I'm thinking this stigma is very likely warranted.
6 Prove to me that your product is safe. Teach me
7 that it's safe. I'm smart; I'll learn it.

8 The lack of clarity between state coal
9 ash regulations and continued discharges from coal
10 ash ponds, and the leaching of metals into
11 groundwater from existing or retired ponds must be
12 stopped. Without cradle-to-grave management and
13 enforceable guidelines for storage and cleanup, we
14 run the risk of continuing to place corporate
15 profits ahead of public health and environmental
16 safety.

17 Subtitle C is the only option that will
18 protect our waters and the citizens of the United
19 States of America. Thank you.

20 MR. DELLINGER: Thank you. 141?

21 MS. GLYNN: Hi. My name is Erin Glynn.
22 I live in East Point, Georgia, a southwestern

1 suburb of Atlanta. I'm here today to join the
2 overwhelming number and majority of citizens who
3 have attended these hearings in calling for the
4 most stringent, hazardous, Subtitle C regulation
5 of coal ash waste.

6 My biggest problem with coal ash as it
7 currently stands is the lack of monitoring data.
8 The fact that we have no effective "snapshot" of
9 ash ponds in the United States, the Southeast, and
10 the state of Georgia is more than concerning. Add
11 to that the opaque nature of these ponds; down a
12 country road, behind hundreds of feet of trees, on
13 private property where reporters and the public
14 can't go, and my concern is even greater.

15 If giant utilities, like the Southern
16 Company claim all is well, why take such
17 precaution to keep coal ash and its related data
18 from the public eye? Subtitle C would improve
19 monitoring and create Federally enforceable
20 standards. We need this desperately. Our state,
21 the state of Georgia, is doing little to nothing
22 and doesn't appear to have the smallest bit of

1 capacity to take on this monumental task. In
2 fact, I can't even get a clear and comprehensive
3 list of all the ash ponds in my state. Some say
4 15, some say 17, some even 28.

5 In addition to submitting my comments
6 today, I'd like to request verification on the
7 number, size, age, contents and location of all of
8 the coal ash waste ponds in the state of Georgia.

9 I met with a woman in Macon a few weeks
10 ago; Gloria. She was too sick to be here today.
11 But she lives on the back border of Plant
12 Scherer's ash pond. She's the closest resident to
13 Scherer's ash pond. Gloria has battled cancer,
14 lost her husband to cancer, and is now watching
15 the two kids across the street, ages seven and
16 five years old, suffer from cancer. She had a new
17 driveway put in a few years ago and sometimes the
18 ash is so heavy that she can see tire tracks in
19 the driveway. They put new windows on the house
20 not too long ago, and before the caulk could even
21 dry it was black with ash. Gloria's house is well
22 water and she has lived there for over 30 years.

1 But this is not just to tell you
2 Gloria's story, because I'm sure you'll hear about
3 that in other ways. This is to tell you about
4 what our state is doing.

5 So what does EPD do? What does EPD do?
6 They permit another waste storage facility at
7 Plant Scherer. The gypsum storage pile is already
8 piling up and Gloria has seen the dust. We need
9 Federal action on this now. EPA has made the
10 right decision in proposing Subtitle C, and I, and
11 we, applaud you. I wasn't even aware that D Prime
12 was on the block for discussion today, so the fact
13 that utilities can create their own regulation and
14 then lobby for it is especially interesting.

15 And I would like to add for the record
16 that my friend Katherine Cummings, from
17 Sandersville, spoke about the Plant Washington
18 landfill. It's important to note that these
19 people have not even applied for that permit
20 because they are waiting on EPA to make the right
21 decision. So please pass the Subtitle C
22 regulation.

1 Thank you.

2 MR. DELLINGER: Number 334 and 335.

3 MR. HUFF: How y'all doing? Thanks for
4 having me. My name is Damarcus Huff.

5 If EPA wants to ensure the safe
6 management of hazardous coal ash and EPA believes
7 that additional coal ash and specific Federal
8 regulations are necessary to protect human health
9 and environmental health, then it's obvious we
10 need a comprehensive program that federally
11 enforces requirements for coal ash waste
12 management and disposal.

13 Therefore, Subtitle C is the way to go
14 to avoid the worst from happening to me, to you,
15 to our family and our friends throughout America.

16 Thank you.

17 MR. DELLINGER: Is number 335 here? Is
18 there anybody with a number lower than 150 in the
19 room that hasn't spoken? Anything below 150?
20 Anything below 160? Does anybody have a number in
21 the room that hasn't spoken?

22 (No audible response.)

1 MR. DELLINGER: Well, I'm going to call
2 a ten-minute recess until other speakers are able
3 to get here.

4 (Recess)

5 MR. DELLINGER: Let's start up again.
6 So I'm calling the hearing to order. One thing
7 that I forgot to tell speakers, that if you have
8 your notes or written materials, if you could put
9 them over here where the reporters are. It's on
10 my left over here and everybody else's right,
11 except for these other three people.

12 So we're going to get started. I'm
13 going to call on numbers 142 and 169.

14 MR. AUTHERY: Good evening. Thanks very
15 much for your time. My name is John Authery, and
16 I serve the Mecklenburg Soil and Water
17 Conservation District Board of Supervisors and I
18 have some comments about coal ash. It seems that
19 all coal ash is America's second largest
20 industrial waste stream. And enough coal ash is
21 generated each year that you could fill 340,00 747
22 jumbo jets with it.

1 Improperly stored coal ash has
2 contaminated drinking water in at least eight
3 states including Maryland, Pennsylvania, and
4 Indiana and it has been linked to harm ecological
5 and human health. People living near unlined coal
6 ash ponds can have an extremely high 1-in-50 risk
7 of cancer. That's more than 2,000 times higher
8 than what the U.S. EPA considers acceptable.

9 Coal ash is hazardous but less strictly
10 controlled than household garbage. The EPA must
11 adopt enforceable Federal safeguards, not
12 successive guidelines for states to protect our
13 drinking water. An analysis of state pollution
14 data by the Environmental Integrity Project, the
15 Sierra Club, and Earthjustice, states that of 39
16 sites analyzed, 35 had groundwater monitoring
17 wells of the grounds of ash waste disposal areas.
18 All of the wells showed concentration of heavy
19 metals such as arsenic and lead that exceeded
20 Federal health standards.

21 Coal ash creates real world hazards for
22 our drinking water and streams. Recent monitoring

1 data found contaminants such as arsenic, lead,
2 selenium, cadmium, mercury and other toxins
3 exceeding drinking water standards in groundwater
4 at 26 of 31 coal ash sites. At three sites
5 arsenic was over 90 times the drinking water
6 standard. 25 of the 31 sites are active disposal
7 facilities. Monitoring in the large majority of
8 sites shows contamination is an ongoing problem,
9 not the results of past practices.

10 What is found in coal ash and what it
11 causes: Aluminum: Bone or brain disorders,
12 especially in people with kidney disease and in
13 children.

14 Arsenic: Cancer of the bladder,
15 kidneys, liver, lungs, prostate and skin.

16 Boron: Harm to male reproductive organs
17 causing birth defects.

18 Cadmium: Causing kidney damage.

19 Chromium: Hexavalent chromium can cause stomach
20 ulcers, convulsions, kidney and liver damage and
21 can increase the risk of cancer.

22 Lead: Damage to the nervous system,

1 brain and kidney damage, miscarriages, learning
2 and behavioral problems in children.

3 Manganese: Changes in the brain and
4 nervous system, learning problems and poor
5 coordination in children.

6 Molybdenum: Pain and inflammation of
7 the joints. Selenium: Nausea, vomiting,
8 diarrhea. Long-term exposure can cause hair loss,
9 nail brittleness, and neurological problems.

10 Sulfate -- Thank you very much. I urge
11 you to adopt something to do about this. Thank
12 you.

13 MR. DELLINGER: Thank you. Numbers 335,
14 336, 337 and 338.

15 MS. OTIS-THOMPSON: My name is Susan
16 Otis- Thompson and I've lived in Charlotte 44
17 years. Thank you for hearing us here in
18 Charlotte. I've lived here 44 years and have come
19 tonight to state reasons why the EPA must now
20 declare coal ash a hazardous waste under Subtitle
21 C.

22 I've been a volunteer on the Water

1 Commission here in Mecklenburg County for six
2 years and served as the chair, but I've come to
3 you as a grandmother and a parent and a citizen.
4 I grew up on the Chesapeake Bay fishing and
5 crabbing in its tidal inlets and now live on Briar
6 Creek in urban Charlotte, which defies the
7 100-year floodplain definition. I can stand on my
8 patio with my grandchildren and my children and
9 watch the power of water as this creek crests its
10 bank, which is made of landfill material. We can
11 see the power of moving water and I have shown my
12 grandchildren and children what water can do and,
13 also, what we cannot see that is in our water here
14 in Charlotte, which has coal ash ponds polluting
15 us.

16 One reason that I found, as chair of the
17 Soil and Water Commission in Mecklenburg County,
18 is that I would try to find information from our
19 State agencies which is, indeed, a patchwork quilt
20 of agencies that I find inactive and postponing to
21 give me information that I wanted to use for our
22 water quality meetings. With some exceptions,

1 this is true, but it is important for this small
2 example of someone serving on our Water Board to
3 tell you that our State agencies are not doing the
4 job. It is difficult to find information; the
5 information has been conflicting, and we need EPA
6 to work on the water problems.

7 Our infrastructure in our cities, as you
8 know, is falling apart and deteriorating in an
9 economy like we have, will probably not be
10 repaired. I have seen the water intakes and know
11 where the water ponds are and know what is going
12 on with the water system that is not being
13 repaired. Two of the discharge wastewater systems
14 upstream from our Mecklenburg Utilities withdraw
15 80 percent of my water and my grandchildren's
16 water. And I ask in this post BP Gulf Oil spill
17 period: What have we learned at the Federal
18 level, if not that the enforcement of violations
19 must come from a broad, powerful agency such as
20 the EPA? The lenient approach towards regulations
21 at the mining and minerals agency used for the
22 polluting industry should compel us. Our EPA must

1 stop dancing with the devil, which is semantics,
2 and call coal ash what it is; a dangerous,
3 hazardous pollutant on the move.

4 Thank you.

5 MR. DELLINGER: Thank you. Number 336.

6 MS. LISEBY:: Hi. Good evening. My
7 name is Donna Lisenby, and I'm the Catawba
8 Riverkeeper for Appalachian Voices and a ward
9 member of Waterkeeper Alliance.

10 So, I've been here at the hearing all
11 day and I don't want to repeat a lot of the
12 awesome comments from so many of our North and
13 South Carolina Riverkeepers who have been battling
14 the toxic effects of these football stadium sized
15 coal ash waste pits on their waterways and in
16 their communities. So instead, I'm going to
17 address two other issues. And I think the toxic
18 effects of coal ash in polluting waterways has
19 been adequately covered.

20 First is the failure of these proposed
21 regs to fully regulate so-called beneficial uses.
22 So I would characterize mine filling, structural

1 fill, the use of coal ash waste to melt snow on
2 roads and on agricultural crops as a hazardous
3 polluting use, not a beneficial use. The mine
4 fill loophole is particularly egregious since it
5 results in direct contact of coal ash with
6 groundwater and the inevitable subsequent
7 contamination over drinking water wells across
8 Appalachia. So we formally request the EPA to
9 strengthen these weak regs, to begin with, and
10 properly regulate coal ash under Subtitle C from
11 the cradle to the grave.

12 Second, I want to address this
13 ridiculous industry smoke screen about the
14 so-called "stigma" of a hazardous waste
15 designation. This argument fails on its face,
16 facially, and in terms of substance. The parade
17 of industry spin doctors and biostitutes(sic) who have
18 stood up here today and projected these dire
19 consequences simply have their facts wrong. The
20 EPA proposal is to regulate CCR as a special
21 waste, not a hazardous waste. So even if their
22 concerns were valid on their face, the EPA has

1 already addressed the stigma argument.

2 But let's wait a minute. Let's step
3 back a minute and let's examine this ridiculous
4 argument in terms of subsidence. Coal ash is
5 poisoning waterways and communities. The stigma
6 argument is the exact same argument that the
7 tobacco industry made when the Surgeon General
8 wanted to place warning labels on cigarettes.
9 They made the same argument that this warning
10 label would stigmatize cigarettes. Well, guess
11 what everybody, and guess what, EPA? There ought
12 to be a warning label on toxic substances that
13 harm human health and the environment. It's
14 honorable, scientifically accurate, and morally
15 responsible to protect innocent people from
16 hazardous poisons that cause cancer and brain
17 damage.

18 So thank you for including that in your
19 proposed regs. And hell yeah, we need to
20 stigmatize coal ash so that future generations are
21 protected.

22 We respectfully ask that the EPA fully

1 regulate coal ash, including mine filling from the
2 cradle to the grave under Subtitle C of RCRA.

3 Thank you for coming to North Carolina,
4 and we hope you guys enjoy your stay here despite
5 all these toxic leaking coal ash ponds that we
6 have.

7 MR. DELLINGER: Number 337.

8 MR. HAMMOCK: My name is Jamie Hammock,
9 and this is my family. We are here to talk about
10 the coal ash ponds because we are the closest
11 house in our neighborhood in relation to the coal
12 ash ponds. And you might think that the coal ash
13 ponds results in all girls, but I don't think
14 that's a very good argument.

15 But we do want to come out and just say
16 that we do feel like this situation is dangerous,
17 and we know that from the situation we had about a
18 year and a half ago in Tennessee. Our family, we
19 play on the lake about every other week, every
20 week or so. We have a boat on the lake. And the
21 elevated toxins are definitely a concern for us.
22 We also -- it's a nuisance. I have been in a

1 situation where I've been coming home from work
2 and driving along the road and a wind storm has
3 come and, you know, my house and my car has been
4 covered by ash. I can't imagine that that's very
5 healthy to our children in our backyard.

6 And then, finally, I just want to say a
7 couple things, that the enforcement of this
8 proposed law are relying on citizens to sue to
9 correct the situation is unfair to us as citizens
10 because we don't have the power or the money to
11 bring the suits. And waiting until 2015 is way
12 too long; it needs to be cleaned up right now.
13 And so we're just going to ask the EPA and Duke
14 Power to be responsible, enforce the law and clean
15 it up.

16 Thank you.

17 MR. DELLINGER: Thank you.

18 MRS. HAMMOCK: I just want to ask the
19 EPA to please get rid of the toxic ponds behind
20 our home. I don't want my children to become
21 statistics.

22 Thank you.

1 MR. DELLINGER: Number 338.

2 MS. SHANE: Good evening. Thank ya'll
3 for being here. My name is Lorraine Shane. I
4 have nothing prepared. I actually didn't plan on
5 coming here.

6 I work at Carolina's healthcare system
7 in the anesthesia department. I've been up since
8 4:30 working a 15-hour shift, so you're just going
9 to have to excuse me.

10 I moved here -- me and my husband moved
11 here -- we are both anesthesia providers from
12 Louisiana. I grew up in New Orleans, the first
13 house on Lake Pontchartrain. Now, if any of y'all
14 have watched the news for the last five years,
15 accidents happen. You know, they happen and they
16 happen big and they affect people's lives and they
17 take away your families, okay, and they take away
18 your ability to fish and your ability to reap the
19 benefits of the water that exists. I grew up on
20 the water. I grew up on that earthen dam.
21 Earthen dams break. That's not rocket scientist,
22 you know; that's what happens over time. And

1 water, the best way to break an earthen dam is to
2 put water on it, okay? And to put unregulated
3 water on it and expect Duke Power -- now, I don't
4 live here -- but to regulate that in a proper
5 function. Now, it behooves me that Duke doesn't
6 take this opportunity right now to step up and do
7 the right thing for the community because that
8 really is your future, okay? That really is. I
9 live in a very small community right down on South
10 Point in Belmont right down from the Allen Steam
11 Station about a half a mile. It's a very small
12 cloistered, gated community. We can afford to
13 live there; most people can't. Now, there are
14 three houses that are off the grid already in my
15 community. Three houses off the grid, and they're
16 not doing with without amenities, either. So I
17 think Duke needs to really pay attention and step
18 up and be proactive and be a true steward of this
19 community. You are the second largest provider of
20 jobs in this state and that is worthy. So we
21 can't knock you for what you do, okay, but more
22 and more the paradigm shift in the community over

1 the next 20 years is more and more people are
2 going to be getting off the grid, okay? So it's
3 time for you to step up to the plate and do the
4 right thing.

5 And state regulations -- we grew up in
6 Louisiana. The State regulations in this state
7 are beyond our comprehension. We've never seen
8 anything like it, okay? So don't rely on the
9 State regulations around here.

10 MR. DELLINGER: Number 339.

11 SPEAKER: I just wanted to say a few
12 words about environmental justice. There's a
13 limit to what you can do with three minutes, but
14 this is a really important issue to me.

15 I understand from the webinar that the
16 EPA had that we were able to listen to, that all
17 of the environmental justice communities were put
18 into a lump, and it was decided by averaging them
19 out that there would be no environmental justice
20 implications from the way things are or the way
21 things could be with the regulations as they are
22 proposed. And I would like to ask you to go back

1 to the drawing board on that, please, because --
2 there is a little graph I picked up here that the
3 Sierra Club did. Have you guys seen this? Okay.
4 Where's the coal? Over here in Appalachia. Is
5 there environmental justice issues over here in
6 California with urban Latino communities? You
7 better believe it. Are they going to be the same
8 as the coal ash issues we've got in Appalachia?
9 Huh-uh. They are not dealing with the coal ash
10 there. And so to lump us -- the whole purpose of
11 environmental justice is to identify communities
12 that are vulnerable and that are unfairly being
13 impacted by an issue. And coal ash is going to
14 hit people in Appalachia very differently than it
15 is in other places, and so you can't average them
16 out; it defeats the whole purpose of looking at
17 environmental justice.

18 I live in a community that's being
19 underground mined. We have no toxic release
20 inventory. What do you think is going to happen
21 if we get Option C (sic), which I want, and they
22 make it more stringent to put it into the

1 landfills and they line them and make it more
2 difficult for industry to do that, but then it's a
3 free-for-all in the beneficial use in the mining
4 backfill. It's going to make us a magnet. Then
5 you have to report it. Then their toxic release
6 is inventoriless where I live in my community.
7 And so, we stand to be impacted differently than
8 other communities.

9 They've also retrofitted two of the
10 power plants with scrubbers. What we see is that
11 it triples the amount of solid waste that we're
12 expected to accommodate in our community. And so
13 we have more waste being generated in more ways.
14 And maybe those toxins aren't traveling out to
15 Canada and New England where they're affluent
16 enough to sue if there are assaults to their
17 health and their environment, but we don't have
18 that. They did away with funding for
19 environmental justice attorneys over a decade ago
20 where I live. This is 15, going on 20 years ago.
21 I've had to file appeals now twice on my own with
22 no legal representation because it does not exist.

1 I live in a community that has
2 double-digit unemployment. The median income is
3 \$14,000 a year. Our families and our children are
4 the least likely to be insured in the state. Does
5 that sound like it might be an environmental
6 justice issue if you have to medicate your child
7 to breathe and you don't have the money for the
8 medication and there's no hospital in our entire
9 county? It's 45 minutes driving the speed limit
10 to get to the nearest emergency room. And when
11 this stuff blows off these dry landfills, you
12 better believe it makes it hard to breathe.

13 So I would like to ask you, please, to
14 do justice and to go back and look at this issue
15 and reevaluate it for what it is.

16 Thank you.

17 MR. DELLINGER: Thank you. Number 162.

18 MR. BRUCE: Good evening. My name is
19 Jimmy Bruce. I'm from Richburg, South Carolina.
20 Thank you all for allowing me to address you today
21 regarding my concerns with proposed coal ash
22 regulations.

1 My life has been one of mostly enjoying
2 and appreciating our environment, while not doing
3 much to preserve or protect it, except perhaps by
4 not littering. This has changed as I become aware
5 of how industry is able to influence our
6 policymakers at the various levels and departments
7 within our government in order to influence
8 favorable or reduced regulations regarding their
9 industry, also known as preserving corporate
10 profitability.

11 The situation we face today regarding
12 how we regulate by-products of coal-produced
13 electricity is not much different. We have been
14 shown that coal ash contains many hazardous
15 substances such as arsenic, mercury, lead,
16 chromium, barium, selenium and cadmium. If these
17 hazardous chemicals are contained within any
18 product, it would seem logical to conclude that
19 the product itself would likely be hazardous as
20 well, and many tests have confirmed these findings
21 regarding coal ash.

22 We have heard personal testimony by

1 individuals who have been affected by the leaching
2 of these toxic chemicals into their well water and
3 soils, who, unfortunately, live in close proximity
4 to where coal ash is being processed.

5 We know these chemicals and metals cause
6 various types of cancers. Reading about the
7 short- and long-term environmental and health
8 impacts of the coal ash disasters in Tennessee in
9 2008 and Kentucky in 2009 is concerning. Knowing
10 we have four coal ash ponds in Charlotte with two
11 discharging into the Catawba River petrifies me.

12 A massive flooding rate above the coal
13 ash ponds has the potential to devastate the
14 quality of life in our region for many years
15 impacting hundreds of thousands of people. With
16 such compelling evidence to support increased
17 regulation, it is inconceivable to me how anyone
18 can consider continuing regulating coal ash as it
19 has been to date.

20 In order to protect and promote the
21 proven industrial uses for some of the coal ash,
22 considerations and accommodations should be made

1 accordingly. Additionally, promoting and
2 developing alternative environmentally
3 friendly-type uses for the unusable ash by-
4 products could offer additional disposal
5 solutions.

6 I will conclude my statements by asking
7 the following questions: Could clean coal
8 technology be the precursor for an increase in
9 coal ash due to an increased number of clean coal
10 power plants? Since this technology is removing
11 pollutants, how does this impact the composition
12 of the ash by-product? I understand the EPA is
13 charged with protecting human health in the
14 environment.

15 Please protect us; our way of life and
16 our environment from future coal ash disasters due
17 to inadequate State or Federal regulations.
18 Please choose to regulate coal ash under Subtitle
19 C.

20 Thank you.

21 MR. DELLINGER: Thank you. We are going
22 to switch out on a panel member here. Suzanne

1 Rudzinski, my boss, will be substituting for Alex
2 Livnat.

3 (Recess)

4 MR. DELLINGER: We are reconvening the
5 hearing now. My intelligence tells me that we
6 have two speakers in the room that want to speak;
7 number 169 and number 340. Excellent. So 169
8 first, and then 340. At the podium, yes. And you
9 can come up and sit at one of the chairs close by.

10 MR. BURDETTE: Good evening. My name is
11 Kemp Burdette, I am the Executive Director of Cape
12 Fear River Watch, an environmental nonprofit
13 committed to protecting and improving the water
14 quality of the Lower Cape Fear River. Our offices
15 are located in Wilmington, North Carolina.

16 The Cape Fear River Basin is the largest
17 river basin in the state of North Carolina and
18 nearly one third of the state's population lives
19 within our basin. The Cape Fear is the only major
20 river in North Carolina to empty directly into the
21 Atlantic Ocean and has the distinction of being
22 the largest biodiversity hotspot on the eastern

1 seaboard of the United States of America. I am
2 here today to speak on behalf of our river and on
3 behalf of our membership, who understand the
4 importance of clean, safe, and beautiful rivers.

5 Progress Energy's Sutton Steam Plant
6 maintains two unlined coal ash ponds on the main
7 branch of the Cape Fear River. These ponds are
8 contained by earthen berms and hold over 555
9 million gallons of coal ash slurry. These ponds
10 are less than 1 mile from the town of Navassa,
11 less than 2 miles from the town of Leland, and
12 less than 3 miles from the city of Wilmington.
13 The population of the lower Cape Fear region is
14 roughly 350,000.

15 These ponds are leaking toxic
16 contaminants, including arsenic, boron, manganese,
17 and iron into our groundwater supply. This
18 contamination has spread 500 feet from the
19 impoundment and will continue to spread as long as
20 those coal ash ponds exist.

21 As the Kingston disaster demonstrated,
22 groundwater contamination is not the only threat

1 that coal ash ponds pose. The Cape Fear region
2 has proven throughout history to be especially
3 prone to hurricanes: Hazel, Dianna, Fran, Floyd,
4 Isabel, Earl just a few weeks ago and the current
5 category four, Igor, off our coast. Hurricane
6 Floyd dropped 19 inches of rain in a single event.
7 19 inches of rain at one time is incredibly
8 destructive, especially to earthen berms and
9 levees like those that failed in New Orleans
10 during hurricane Katrina, and like those that
11 contain the Sutton Steam Plant coal ash ponds. It
12 is not a question of if a category four or five
13 hurricane will make landfall in the Cape Fear
14 Region; it is a question of when. When that time
15 comes the Sutton coal ash ponds will pose a
16 significant risk to our region.

17 The failure of those berms would release
18 over half a billion gallons of coal ash into the
19 river just upstream from Navassa, Leland,
20 Wilmington, Carolina Beach, Southport, and Bald
21 Head Island. That coal ash slurry would move up
22 and down the river countless times with the tides

1 distributing toxins throughout our wetlands and
2 along the banks of historic downtown Wilmington.
3 It would make its way to the ocean and currents
4 would distribute it along our beaches during the
5 height of tourist season.

6 So I urge the EPA to regulate coal ash
7 under Subtitle C. Wet storage of coal ash poses
8 enormous risk to human health, and the health of
9 the Cape Fear River.

10 Thank you.

11 MR. DELLINGER: Thank you. Number 340,
12 state your name and your affiliation.

13 MS. JOYNER: My name is Julie Joyner. I
14 am a housewife and mother of five children. I'm
15 learning from my children about this issue and I
16 just wanted to urge your to pass the C rather than
17 the D. In fact I've been thinking about this all
18 day. I came out here to listen, but I have a
19 chance to speak so I thought I would take it.

20 It's just commonsense to me, just makes
21 sense. You know, I would never mix up a cocktail
22 of lead and selenium or arsenic -- that's the one

1 that really got me, and you know, feed that to --
2 nor would anybody. You know, they would be put in
3 prison, that would be murder. And so, just to
4 think that through irresponsibility or just lack
5 of response, these kinds of toxins are getting
6 into the water of our children and our neighbors
7 is just mind-blowing to me and I just would like
8 to see -- I would like to see you take the
9 leadership and just call a spade a spade, I mean
10 let's just call it what it is, you know, it's
11 toxins.

12 Our own bodies are not healthy if our
13 waste is not properly disposed of. I mean, that's
14 just commonsense. It makes sense in our own
15 bodies and it makes sense in the whole natural
16 world, that if we don't properly dispose of toxins
17 we're going to get sick, and we're going to make
18 other people sick, and could even die.

19 So it just makes sense -- oh, mercury is
20 the other one. I'm not a teacher or a professor,
21 just a concerned citizen. And my dad worked for
22 JC Penney's for 38 years and their motto was the

1 golden rule, "do unto others as you would have
2 them do unto you." So it just makes sense to me
3 that if this is something that is within our power
4 to adjust, to fix, to make better for our
5 children, it just makes sense that we would do
6 that.

7 With regard to the C and the D, I think
8 the federal government -- although I'm not a big
9 fan of big government, but in this case I think it
10 would be way more effective if we had a consistent
11 policy across the board and you don't have states
12 vying for each other's -- you don't have people
13 running to this state to do something because it's
14 easier there. It's just consistent and makes
15 sense that it would be way more effective if you
16 went with the federal regulation because everybody
17 knows that, you know, if your boss is around
18 you're going to do a better job, and if you're
19 just left to your own implementation it's not
20 going to be a good result.

21 So I think that's about it for this mom.

22 Thank you.

1 MR. DELLINGER: Thank you. Is number
2 154 in the room?

3 MR. HANNON: How are you all doing
4 today? Okay, so I should go ahead and start off.
5 I'm just a concerned citizen. I know about the
6 events that happened in Kingston, Tennessee and
7 basically I wrote something down so I'll go ahead
8 and read it.

9 The threat of large amounts of CCRs is
10 present and this material now requires imminent
11 and stringent regulation. The main issues seem to
12 be solved fully through the proposed Subtitle C
13 and in part by Subtitle D. The building materials
14 industry also uses CCRs in their production
15 processes. Their end product users currently use
16 these products. Building material demands should
17 not be reduced considering the EPA continues to
18 stand behind the fact that this special waste can
19 be beneficially used and these materials producers
20 will be sure to relay such information if
21 confronted with these issues.

22 Likely, more beneficial users will be

1 able to access and feasibly use this material in
2 their own beneficial applications as a result of
3 the increased storage costs and likely increase
4 material manufacturing buying power. However,
5 states have commented that the beneficial use of
6 CCRs will be prohibited if the EPA designated CCRS
7 as hazardous waste. I encourage the EPA to look
8 further into this state beneficial usage issue.

9 While closing all existing surface
10 impoundments that don't meet the rule's technical
11 requirements will increase cost, it is a necessary
12 investment to ensure safety. The permitting
13 process provides a level of needed federal
14 control. Subtitle C is the only approach that
15 allows direct federal enforcement of the rule's
16 requirements. Multiple studies suggest that the
17 states have not yet adequately implemented the
18 regulatory programs that were CCR management
19 units, and that significant gaps continue to
20 remain under state regulation.

21 CCRs from 56 percent of the 34
22 facilities, in another mentioned study; this one

1 done in 2009 by the EPA, exceeded at least one of
2 the toxicity characteristics regulatory values for
3 at least one type of CCR, illustrating the
4 prevalent problem.

5 In 2008 the Environmental Council of the
6 States issued a resolution stating that federal
7 regulation wasn't necessary. The data supports
8 that they are wrong. And while state regulations
9 may be in place they are obviously either
10 inefficient or unenforced.

11 I encourage your cooperation with state
12 dam safety programs, considering that the
13 structural stability of the surface impoundments
14 is largely regulated under these programs. To
15 date the EPA claims to have made certain
16 conclusions from three recently prepared EPA
17 reports. These findings all seem to clearly
18 support mandating groundwater monitoring systems.
19 I applaud your including this criteria in both
20 Subtitle C And D. The amount and solubility of a
21 constituent that may reach an aquifer or drinking
22 water well are issues that the EPA needs to

1 further investigate however.

2 Please regulate this dangerous material
3 to ensure that our drinking water, well-being, and
4 a general environment are protected against these
5 known effects of this substance. Thank you and
6 please implement Subtitle C.

7 MR. DELLINGER: Can you state your name?

8 MR. HANNON: Reuben Hannon.

9 MR. DELLINGER: Thank you.

10 MR. HANNON: Thank you.

11 MR. DELLINGER: Do we have another
12 speaker? Do you have a number? Okay. State your
13 name and your affiliation.

14 MS. POWELL: My name is Elaine Powell.
15 I am not representing anybody except my family.
16 And I'm a water drinker. I think that's
17 important.

18 First I just want to say I live on
19 Mountain Island Lake. We can walk to the water
20 and play in it and everything else, so the fact
21 that coal ash is dumped into the lake is somewhat
22 frightening. I'm hoping that you'll pass the most

1 strict guidelines -- I think they're calling it
2 Subtitle C. I don't want to say the wrong letter.
3 I just want "subtitle strict." So if you could
4 pass that.

5 I was here earlier and had a prepared
6 statement but I realized they can be kind of
7 boring so I just wanted to tell you, some of my
8 background -- my background here in Charlotte is
9 in healthcare. And I don't know if you have had
10 many healthcare people here today but I have the
11 honor and privilege to work on pediatrics. At the
12 same time, it was really hard because we have a
13 lot of patients who have strange cancers. And
14 when a child is diagnosed with a strange cancer, a
15 lot of times they'll come in and try to figure out
16 if it's genetic or what caused it.

17 Quite often the questionnaire is filled
18 with environmental questions and I have to wonder
19 in the back of my mind, all the time, what we are
20 exposing ourselves to, and our children, by not
21 regulating coal ash. So again, I just ask you for
22 the strictest regulations.

1 I'm sorry that there will be
2 consequences for the people who work in the coal
3 ash industry and recycling and all that, who are
4 fearful of the stigma of the hazardous
5 designation. I'm sorry for that but we can't go
6 forward doing the wrong thing for public health
7 because of unintended consequences for them.
8 Things change when we learn that public health is
9 threatened. We have to do good things. And we
10 have to get the strictest regulation.

11 And the other thing is, at our house,
12 many of the people around us, we all rely on well
13 water. We don't have water so we're drinking the
14 water that's coming in -- the groundwater from all
15 of this water that's been exposed to coal ash for
16 many years. It's scary. And just as a homeowner,
17 if you call and want to get your water tested for
18 all these heavy metals, it's three or \$400, so a
19 lot of people aren't even going to do it. And
20 they think that well water is wonderful but you
21 know, after you read all the research, it's kind
22 of terrifying.

1 Anyway I just ask you for the strictest
2 -- Subtitle C if that's the strictest. Thank you
3 for listening and have a good night.

4 MR. DELLINGER: Thank you. Does anybody
5 else in the room have a number, whether it's in
6 the 300s or 100s or 200s, or double digits or
7 single digits? It's a little bit after 8:30.
8 We'll reconvene at 9:00 o'clock.

9 (Whereupon, at 8:30 p.m., an
10 evening recess was taken.)

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1 N I G H T S E S S I O N

2 (9:00 p.m.)

3 MS. RUDZINSKI: Okay, we're going to
4 reconvene the hearing. I understand we have three
5 speakers in the room. Number 170, 193 and 341.
6 Are all of you in the room? 170, do you want to
7 come up and start first? I just want to remind
8 you to state your name for the record and whatever
9 affiliation you have, that would be great. Thank
10 you.

11 MS. LUKAS-COX: Good evening. I'm Karen
12 Lukas-Cox and I'm just a citizen of Charlotte.
13 Point one, coal ash ponds need to be regulated by
14 EPA. If your lover were HIV-positive you would
15 not have sexual intercourse without using a
16 condom. Water bodies have intercourse all the
17 time; like young couples wildly on the surface
18 from each storm event, and like maturing couples
19 deep underground, slowly over decades.

20 Fluids mix during intercourse. In the
21 case of coal ash ponds we have a giant condom.
22 Fluids from the coal ash ponds casually mix with

1 the neighboring surface water as well as the
2 neighboring groundwater, usually both linked to
3 our drinking water supplies. So I repeat: coal
4 ash ponds need to be regulated by the EPA.

5 Point two: It is common knowledge that
6 the content of coal ash ponds is toxic and that
7 when these contents cross over into neighboring
8 drinking water supplies. Like lovers practicing
9 unprotected intercourse, they will contaminate
10 these water bodies. Thus, because the coal ash
11 ponds' contents are toxic there's no doubt they
12 are a hazard to human and wildlife consumption.
13 Therefore EPA needs to classify these coal ash
14 ponds as hazardous.

15 Point three: the building material
16 industry does not need to worry about their
17 business in case these coal ash ponds are
18 classified as hazardous. As far as I can tell
19 from my last school supply shopping mission,
20 pencils were sold en masse even if lead is toxic
21 to human consumption. To ease the mind of the
22 building material industry, in addition to

1 classifying and defining coal ash ponds as
2 hazardous to human and wildlife consumption, in
3 liquid form for example, a separate clause can
4 indicate that coal ash pond contents are safe for
5 use in building material applications.

6 Point four, I quote Duke Energy's
7 website: Quote, "At Duke Energy, supporting the
8 health and welfare of our communities is directly
9 tied to our commitment to our future
10 sustainability. We believe that the decisions we
11 make today will determine our long-term prospects
12 as a company," end quote. Cleaning up coal ash
13 ponds is Duke Energy's and other power companies'
14 chance to act upon their commitment to community.
15 It is their chance to stop sitting on the risk of
16 contaminating drinking water reservoirs and
17 rewarding their bottom lines with a smart
18 investment.

19 Thank you very much for listening and
20 good luck with the rest.

21 MS. RUDZINSKI: Thank you. Number 193?

22 MS. BENDEZU: Good evening. My name is

1 Roxana Bendezu and I am with the Conservation
2 Chair of the Central Piedmont Sierra Club group
3 and a member of the Social Justice Committee of
4 St. Peter's Catholic Church. And yes, I kneel at
5 Mass but my parents never taught me to kneel for
6 money or to corporations. Instead they taught me
7 to stand up and fight for the right causes and the
8 regulation of coal ash as a hazardous waste under
9 Subtitle C is one of them.

10 On the other side of the world, my
11 father fights for similar causes of great
12 importance as President of the Andes Parliament in
13 South America. But today I stand here before you
14 only as a citizen of the world to remind you of
15 your role to protect creation, which includes the
16 human race. We live in a society that focuses on
17 making profit. But who are the ones making the
18 most profit?

19 We say enough. If we lived in a perfect
20 world these regulations would not be necessary but
21 unfortunately we do not. We are so used to the
22 social stratification, it is now ingrained in our

1 veins. We are okay with helping the wealthy get
2 wealthier and seeing the poor not only get poorer
3 but sick. We say enough. Reject the idea of
4 alienation. Do not allow the feeling of isolation
5 and misery to overtake our community. Listen to
6 our voices that call for change. Do not make us
7 feel powerless against the corporate giants. We
8 say enough.

9 Realize the power vested upon you and
10 your position not only as members of the EPA but
11 also as citizens of this great nation and this
12 planet. Let's once again lead the way and show
13 our deep respect for earth and all its
14 inhabitants. Remember this is not the only
15 country with environmental issues. Once we
16 accomplish this task in the United States, other
17 countries will follow suit. It will no longer be
18 the exception but the norm nonetheless.

19 I beg you to make the decision based on
20 the interests of the global common good and not of
21 the few. We have done that enough. Today I am
22 asking you to not be afraid to show no respect for

1 the status quo. Do not be afraid to be called the
2 crazy ones, because the people who are crazy
3 enough to think they can change the world are the
4 ones who do. I urge you to adopt Subtitle C and
5 finally regulate coal ash as a hazardous waste.

6 Finally, if there is something I would
7 like you to remember from my brief intervention,
8 is the word that will hopefully resound in your
9 head when making the decision: Enough.

10 MS. RUDZINSKI: 341, please.

11 MS. BECK: Good evening. My name is Pam
12 Beck and I'm affiliated with the Catawba
13 Riverkeeper Foundation and also the chairman of
14 the Mountain Island Lake Marine Commission.

15 First of all, thank you for being here
16 today. I know it's been a long day and I won't
17 belabor my position but I do want you to know that
18 we do appreciate your being here and having this
19 opportunity to comment.

20 I want to encourage you to adopt the
21 strictest hazardous monitoring possible. I am a
22 neighboring community member to the Riverbend

1 Steam Plant on Mountain Island Lake. We're at the
2 edge of a rural area that isn't likely to have
3 municipal water supplies anytime soon, and I'm
4 terribly concerned about the quality of our
5 groundwater. Many of us in our rural area on the
6 edge of Charlotte depend on well water for our
7 water source and it's not likely that at anytime
8 in the near future we'll be receiving municipal
9 water. So I want to encourage you to help us to
10 protect the drinking water source that we do have
11 there. We've lived with the fallout from the ash.
12 We've lived with the noises from the industrial
13 site. And all of those were assumed to be the
14 lifestyle -- we did trade that for the convenience
15 and beauty of living by the lake. But at the same
16 time that compromising, we don't want to
17 compromise our health. And I know that eventually
18 after Riverbend is one day closed down those pools
19 are going to be of concern to all of us for
20 generations, so please adopt the strictest; C.

21 Thank you very much.

22 MS. RUDZINSKI: Thank you. Do we have

1 anyone else with a number in the room?

2 (No audible response.)

3 MS. RUDZINSKI: Okay, I guess we'll take
4 a 15 minute adjournment. Well, how about we make
5 it 13 minutes, to 9:20.

6 (Recess)

7 MS. RUDZINSKI: I don't think we have a
8 new speaker in the room yet. So what we're going
9 to do is we are just merely going to adjourn until
10 the next speaker arrives. Not a set time so
11 whoever walks in the door that's got the number,
12 we will reconvene at that time. So thank you for
13 your patience.

14 (Recess)

15 MS. RUDZINSKI: Okay, we are
16 reconvening. And speaker 196, if you would, state
17 your name for the record. And if you have
18 affiliation, also note that. Thank you.

19 MS. MCCARTHY: My name is Ann McCarthy
20 and I'm a member of the Catawba River keepers
21 foundation and the (inaudible) which is, like, a
22 subsidiary of them, a Riverkeeper. I'm here to

1 voice my support for the Subtitle C proposal
2 regarding the regulation of coal ash and
3 classifying it as a hazardous toxic waste.

4 I am also encouraging an extension of
5 the regulation be applied to the reuse or
6 recycling of coal ash. The regulation should be
7 proactive as well as reactive, after over 40 years
8 of neglect.

9 National regulation, as you know, is
10 critically needed, and it must be now. Your
11 schedule of multistate hearings supports the need
12 for federal oversight of this problem. States are
13 unable to deal with the vastness of the problem,
14 which crosses the state boundaries. I am from
15 South Carolina. The toxic chemicals seeping from
16 coal ash ponds in North Carolina are going into
17 the waterways which go into Lake Wylie, which is
18 the source of water for myself, my family, and my
19 neighbors in South Carolina. Thousands of people
20 are exposed in both North and South Carolina due
21 to their toxic water.

22 Your own study in 2002 confirms that

1 people living near the coal ash residue storage
2 sites have a one in 50 chance of developing
3 cancer. Lining of the coal ash storage ponds is a
4 minimal step in this process, and should be
5 implemented immediately, as well as the cleanup of
6 these coal ash ponds, to stem the seepage of toxic
7 chemicals into the ground and water supplies,
8 which are estimated to last for years to come.

9 Recent studies verify that contamination
10 of the water supply is spreading, and at toxic
11 levels, while the industry's cry that it will cost
12 the public more money for their products. It will
13 never come close to the cost people are paying and
14 will continue to pay with their lives and health,
15 plus the costs associated with chronic and fatal
16 illnesses caused by exposure to these dangerous
17 chemicals.

18 The toxic events in Georgia in 2002 and
19 in Tennessee in 2008 press the issue as a national
20 regulation oversight enforcement need. The
21 victims who will suffer the consequences of
22 unregulated coal ash waste need your support.

1 Thank you for your time and attention.

2 MS. RUDZINSKI: Thank you. I guess we
3 are back on break until our next speaker arrives,
4 then.

5 (Recess)

6 MS. RUDZINSKI: Okay, I'm going to
7 reconvene the hearing. I'm going to have number
8 187 come up to the mike. If you would, state your
9 name for the record and whatever affiliation you
10 may have, and the floor is yours for three
11 minutes.

12 MS. MOORE: Okay, my name is Sarah
13 Moore. I am a junior at Catawba College, located
14 in Rowan County, North Carolina.

15 I am here tonight to ask you to classify
16 coal combustion residuals as Subtitle C, hazardous
17 waste. As a concerned citizen I believe it is the
18 government's job to protect all citizens from the
19 hazardous wastes given off from our nonrenewable
20 energy sources. Coal ash ponds around America,
21 including the Buck Steam Station operated by Duke
22 Energy located in Rowan County, which was rated as

1 a high hazardous site, need to be strictly
2 regulated not only for the health of every
3 American citizen, but also for every ecosystem
4 affected by our unsustainable energy use needs.
5 Strict regulation of this hazardous waste would
6 show that the U.S. government is moving towards
7 providing its citizens with affordable, efficient,
8 clean energy. And that's all I have to say about
9 that.

10 MS. RUDZINSKI: Thank you very much.
11 We'll go on break until the next speaker arrives.

12 (Recess)

13 MS. RUDZINSKI: Okay, we're going to
14 reconvene, and we're going to have a speaker here.
15 If you could please state your name.

16 MR. WESTON: My name is Gene Weston and
17 I'm affiliated with several different companies:
18 Burgess-Brogden Concrete in Sumter, South
19 Carolina; Burgess-Brogden Building Supply in
20 Sumter, South Carolina; and CastLite Sales of
21 South Carolina, from Lake City, South Carolina.
22 I'm president of Burgess-Brogden, both companies,

1 and we have about 20 employees on the concrete
2 side and another 30 employees on the building
3 supply side, and approximately 5 jobs through
4 CastLite Sales.

5 Burgess-Brogden concrete is in the
6 business of manufacturing ready-mix concrete. For
7 over 40 years we've used fly ash as an additive in
8 ready-mix concrete for the DOT, for institutional
9 use, on municipal water supplies, and any number
10 of different functions you could think of. As
11 everyone is probably aware, it's probably about
12 the most widely used construction material in the
13 world. We've used concrete with fly ash in it
14 during this time and have never had an issue with
15 anyone ever getting ill from use of our concrete.

16 Though the proposed reclassification
17 won't disallow use of fly ash in concrete it's
18 unlikely that folks in my industry, ready-mix
19 concrete, will continue to consume fly ash at the
20 rate -- by way of 15 million tons a year, for use
21 in concrete. So that 15 million tons a year that
22 we're using in concrete in your bridges and in

1 your roads and slabs on grading foundations will
2 go away and that's now going to be landfilled.
3 That's the thing we don't want to happen.

4 Burgess-Brogden Building Supply uses
5 bottom ash in the manufacture of lightweight
6 concrete block. This takes the place of other
7 lightweight aggregates, which are pretty much in
8 this area manufactured by expansion in a rotary
9 kiln process, which requires heat, which requires
10 energy, which gives off a CO2 emissions. And
11 these have already been subject to CO2 emissions
12 in the production of power.

13 We've never had, again, a problem with
14 anyone getting ill with the millions of block that
15 we have made using bottom ash. Likewise, bottom
16 ash has been used as a road material and in a
17 number of different tests done by our power
18 companies in South Carolina, neither the
19 stormwater runoff nor the wells (inaudible) these
20 roads have shown any sign, and I mean any sign, of
21 detrimental effects from the bottom ash that has
22 been used in this construction.

1 My partner in CastLite Sales has
2 partnered with power companies in South Carolina
3 to use bottom ash beneficially. Unfortunately, if
4 classified as a hazardous material, we will not
5 continue to use bottom ash. That company will go
6 away. So folks like us quit using it, what we're
7 going to see is 100 pounds of coal is going to
8 produce about 10 pounds of residue that right now
9 is heading toward an ash pond, a dump on the power
10 plant side. Of that 10 pounds about seven and a
11 half pounds are being used as fly ash and bottom
12 ash beneficially in a given good economic time.
13 That's going to go away.

14 The bad news is the landfill at the
15 power plant is going to grow that fast. That
16 stuff is then going to be put in dumps and on
17 trains and trucked to hazardous waste landfills
18 off-site. So it's still going to still be on the
19 road, still be on our right of ways and still take
20 landfill space. The coal plants aren't going to
21 go away because you and I as Americans like to
22 have this light come on with a flip switch.

1 Finally, reclassification will have an
2 unintended consequence in increasing CO2
3 emissions, drive up the cost of power and
4 construction for all of us, put pressure on our
5 other natural resources, and impede American
6 competitiveness and achieve very little return for
7 the costs incurred.

8 Thank you all for having me here
9 tonight. Didn't realize the time frame was going
10 to be so short or I'd been a lot quicker to talk.
11 But thanks again for your time and I appreciate
12 you giving us this opportunity to speak. Thank
13 you.

14 MS. RUDZINSKI: Thank you. And we'll go
15 into recess until we get the next speaker, as
16 well.

17 (Recess)

18 MR. DELLINGER: The hearing is
19 officially closed.

20 (Whereupon, at 11:05 p.m., the
21 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, Carleton J. Anderson, III do hereby
3 certify that the witness whose testimony appears
4 in the foregoing hearing was duly sworn by me;
5 that the testimony of said witness was taken by me
6 and thereafter reduced to print under my
7 direction; that said deposition is a true record
8 of the testimony given by said witness; that I am
9 neither counsel for, related to, nor employed by
10 any of the parties to the action in which these
11 proceedings were taken; and, furthermore, that I
12 am neither a relative or employee of any attorney
13 or counsel employed by the parties hereto, nor
14 financially or otherwise interested in the outcome
15 of this action.

16 /s/Carleton J. Anderson, III

17

18

19 Notary Public in and for the

20 Commonwealth of Virginia

21 Commission No. 351998

22 Expires: November 30, 2012